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

FORM 10-Q

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

For the quarterly period ended June 30, 2005

Commission File No. 0-14710

XOMA Ltd.

(Exact name of registrant as specified in its charter)

Bermuda	**52-2154066**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

2910 Seventh Street, Berkeley, CA 94710
(Address of principal executive offices, including zip code)

(510) 204-7200
(Registrant's telephone number, including area code)

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 is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934). Yes ☒ No ☐

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

Class	**Outstanding at August 2, 2005**
Common shares US$.0005 par value	**86,276,620**

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XOMA Ltd.

FORM 10-Q

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PART I - FINANCIAL INFORMATION

ITEM 1. CONDENSED CONSOLIDATED FINANCIAL STATEMENTS

XOMA Ltd.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	June 30, 2005	December 31, 2004
	(unaudited)	(note 1)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 55,769	$ 23,808
Short-term investments	—	511
Receivables	4,374	707
Related party receivables	104	167
Prepaid expenses	2,073	1,414
Total current assets	62,320	26,607
Property and equipment, net	18,547	19,306
Related party receivables – long-term	171	188
Receivables – long-term	218	—
Deposits and other	3,205	159
Total assets	$ 84,461	$ 46,260
LIABILITIES AND SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)		
Current liabilities:		
Accounts payable	$ 1,816	$ 1,919
Accrued liabilities	7,236	19,331
Notes payable	—	116
Capital lease obligations	104	237
Deferred revenue	2,902	2,000
Total current liabilities	12,058	23,603
Deferred revenue – long-term	5,551	6,333
Convertible debt – long-term	60,000	—
Interest bearing obligation – long-term	8,844	40,934
Total liabilities	86,453	70,870
Commitments and contingencies		
Shareholders' equity (net capital deficiency):		
Preference shares, $.05 par value, 1,000,000 shares authorized		
Series A, 135,000 designated, no shares issued and outstanding	—	—
Series B, 8,000 designated, 2,959 shares issued and outstanding; aggregate liquidation preference of $29.6 million	1	1
Common shares, $.0005 par value, 210,000,000 shares authorized, 86,276,623 and 85,587,174 shares outstanding at June 30, 2005 and December 31, 2004, respectively	43	43
Additional paid-in capital	654,937	653,537
Accumulated comprehensive income	—	280
Accumulated deficit	(656,973)	(678,471)
Total shareholders' equity (net capital deficiency)	(1,992)	(24,610)
Total liabilities and shareholders' equity (net capital deficiency)	$ 84,461	$ 46,260

See accompanying notes to condensed consolidated financial statements.

XOMA Ltd.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited, in thousands, except per share amounts)

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Revenues:				
License and collaborative fees	$ 2,655	$ 757	$ 3,180	$ 912
Contract revenue	933	—	2,192	—
Royalties	1,571	21	2,780	36
Total revenues	5,159	778	8,152	948
Operating costs and expenses:				
Research and development (including contract related of $974 and $1,785, respectively, for the three and six months ended June 30, 2005, and zero for the same periods of 2004)	9,547	12,862	19,549	25,877
General and administrative	3,709	3,588	7,460	7,523
Collaboration arrangement	—	5,191	—	8,429
Total operating costs and expenses	13,256	21,641	27,009	41,829
Loss from operations	(8,097)	(20,863)	(18,857)	(40,881)
Other income (expense):				
Investment and interest income	418	100	987	294
Interest expense	(1,117)	(278)	(1,778)	(618)
Other income (expense)	252	(2)	41,184	(6)
Income (loss) from operations before income taxes	$ (8,544)	$ (21,043)	$ 21,536	$ (41,211)
Provision for income taxes	38	—	38	—
Net income (loss)	$ (8,582)	$ (21,043)	$ 21,498	$ (41,211)
Basic net income (loss) per common share	$ (0.10)	$ (0.25)	$ 0.25	$ (0.49)
Diluted net income (loss) per common share	$ (0.10)	$ (0.25)	$ 0.20	$ (0.49)
Shares used in computing basic net income (loss) per common share	86,253	84,391	85,997	84,281
Shares used in computing diluted net income (loss) per common share	86,253	84,391	115,332	84,281

See accompanying notes to condensed consolidated financial statements.

XOMA Ltd.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(unaudited, in thousands)

	Six Months Ended June 30,	
	2005	2004
Cash flows from operating activities:		
Net income (loss)	$ 21,498	$(41,211)
Adjustments to reconcile net income (loss) to net cash used in operating activities:		
Depreciation and amortization	2,218	2,184
Common shares contribution to 401(k) and management incentive plans	1,304	906
Accrued interest on convertible notes and other interest bearing obligations	1,563	(6)
Amortization of debt issuance costs	205	—
Gain on extinguishment of long-term debt	(40,935)	—
Loss on disposal of property and equipment	2	3
Gain on sale of investments	(271)	—
Changes in assets and liabilities:		
Receivables and related party receivables	(3,805)	10,575
Prepaid expenses	(166)	121
Deposits and other	(297)	—
Accounts payable	(103)	(2,906)
Accrued liabilities	(13,658)	8,373
Deferred revenue	120	9,273
Net cash used in operating activities	(32,325)	(12,688)
Cash flows from investing activities:		
Proceeds from sale of short-term investments	502	—
Purchase of property and equipment	(1,461)	(1,437)
Net cash used in investing activities	(959)	(1,437)
Cash flows from financing activities:		
Proceeds from short-term loan	—	508
Principal payments of short-term loan	(115)	(13,233)
Payments under capital lease obligations	(133)	(294)
Proceeds from issuance of long-term notes	8,844	—
Net proceeds from issuance of convertible notes	56,553	—
Principal payments of convertible notes	—	(5,000)
Proceeds from issuance of common shares	96	1,321
Net cash provided by (used in) financing activities	65,245	(16,698)
Net increase (decrease) in cash and cash equivalents	31,961	(30,823)
Cash and cash equivalents at the beginning of the period	23,808	84,812
Cash and cash equivalents at the end of the period	$ 55,769	$ 53,989

See accompanying notes to condensed consolidated financial statements.

XOMA Ltd.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

1. OPERATIONS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Business

XOMA Ltd. ("XOMA" or the "Company"), a Bermuda company, is a biopharmaceutical company that develops for commercialization antibodies and other genetically-engineered protein products to treat immunological and inflammatory disorders, cancer and infectious diseases. The Company's products are presently in various stages of development and are subject to regulatory approval before they can be introduced commercially. The Company has an interest in one approved product, RAPTIVA®, which is marketed in the United States, Europe and elsewhere, for the treatment of moderate-to-severe plaque psoriasis under a royalty agreement with Genentech, Inc. ("Genentech"). XOMA's pipeline includes both proprietary products and collaborative programs at various stages of preclinical and clinical development.

Basis of Presentation

The condensed consolidated financial statements include the accounts of XOMA and its subsidiaries. All significant intercompany accounts and transactions were eliminated during consolidation. The unaudited financial statements have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information and with the instructions to Form 10-Q. These financial statements and related disclosures have been prepared with the assumption that users of the interim financial information have read or have access to the audited financial statements for the preceding fiscal year. Accordingly, these statements should be read in conjunction with the audited Consolidated Financial Statements and related Notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2004, filed with the SEC on March 15, 2005.

In the opinion of management, the unaudited condensed consolidated financial statements include all adjustments, consisting only of normal recurring adjustments, which are necessary to present fairly the Company's consolidated financial position as of June 30, 2005, the consolidated results of the Company's operations for the three months and six months ended June 30, 2005 and 2004, and the Company's cash flows for the six months then ended. The condensed consolidated balance sheet amounts at December 31, 2004, have been derived from audited consolidated financial statements. The interim results of operations are not necessarily indicative of the results that may occur for the full fiscal year or future periods.

Critical Accounting Policies

The Company believes that there have been no significant changes in its critical accounting policies during the six months ended June 30, 2005, as compared with those previously disclosed in its Annual Report on Form 10-K for the year ended December 31, 2004, filed with the SEC on March 15, 2005.

Estimates

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 and liabilities and disclosure of contingent assets and liabilities, if any, at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ materially from those estimates.

Concentration of Risk

Cash, cash equivalents, short-term investments and accounts receivable are financial instruments, which potentially subject the Company to concentrations of credit risk. The Company maintains money market funds and short-term investments that bear minimal risk. The Company has not experienced any significant credit losses and does not generally require collateral on receivables. For the six months ended June 30, 2005, four customers represented 47%, 25%, 13% and 12% of total revenues and, as of June 30, 2005, three of these customers had outstanding receivables of $2.0 million, $1.2 million and $0.9 million. For the six months ended June 30, 2004, two customers represented 70% and 11% of total revenues and, as of June 30, 2004, there were no billed or unbilled receivables outstanding from these customers.

Reclassifications

Certain items previously reported in specific financial statement captions have been reclassified to conform to the fiscal 2005 presentation. Such reclassifications have not impacted previously reported revenues, operating loss or net loss.

XOMA Ltd.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

Share-Based Compensation

In accordance with the provisions of the Statement of Financial Accounting Standards No. 123, "Accounting for Stock-Based Compensation" ("SFAS 123"), as amended by Financial Accounting Standards No. 148 "Accounting for Stock-Based Compensation – Transition and Disclosure – an amendment of SFAS No. 123," the Company has elected to continue to follow Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") and related interpretations and to adopt the "disclosure only" alternative described in SFAS 123. Under APB 25, if the exercise price of the Company's employee share options equals or exceeds the fair market value on the date of the grant or the fair value of the underlying shares on the date of the grant as determined by the Company's Board of Directors, no compensation expense is recognized. Accordingly, the financial statements reflect amortization of compensation resulting from options granted at exercise prices which were below market price at the grant date. Had compensation cost for the Company's share-based compensation plans been based on the fair value method at the grant dates for awards under these plans consistent with the provisions of SFAS 123, the Company's net income (loss) and net income (loss) per share would have been decreased (increased) to the pro forma amounts indicated below for the three and six months ended June 30, 2005 and 2004 (in thousands, except per share amounts):

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Net income (loss) – as reported	$ (8,582)	$ (21,043)	$ 21,498	$ (41,211)
Deduct:				
Total share-based employee compensation expense determined under fair value method	(2,733)	(1,081)	(3,163)	(1,892)
Pro forma net income (loss)	$ (11,315)	$ (22,124)	$ 18,335	$ (43,103)
Income (loss) per share:				
Basic – as reported	$ (0.10)	$ (0.25)	$ 0.25	$ (0.49)
Basic – pro forma	$ (0.13)	$ (0.26)	$ 0.21	$ (0.51)
Diluted – as reported	$ (0.10)	$ (0.25)	$ 0.20	$ (0.49)
Diluted – pro forma	$ (0.13)	$ (0.26)	$ 0.17	$ (0.51)

The fair value of each option grant under these plans is estimated on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions used for grants during the periods indicated below:

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Dividend yield	0%	0%	0%	0%
Expected volatility	83%	79%	83%	1.08%
Risk-free interest rate	3.70%	1.17%	4.10%	3.57%
Expected life	4.1 years	6.5 years	4.3 years	5.1 years

On April 15, 2005, with the approval of the Company's Board of Directors, the Company accelerated the vesting of all outstanding employee share options with an exercise price greater than $3.00 per share. Because the exercise price of all the accelerated options exceeded the market price per share of the common shares as of the new measurement date, the acceleration had no impact on the Company's earnings for the three and six months ended June 30, 2005. The Company's modification to its outstanding employee share options will allow expense recognized in future financial statements to better reflect the Company's compensation strategies under SFAS 123R, which will be adopted by the Company as of January 1, 2006.

Comprehensive Income (Loss)

Unrealized gains or losses on the Company's available-for-sale securities are included in other comprehensive income (loss). Comprehensive income (loss) and its components for the three and six months ended June 30, 2005 and 2004, are as follows (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Net income (loss)	$ (8,582)	$ (21,043)	$ 21,498	$ (41,211)
Unrealized gain (loss) on securities available-for-sale	—	(15)	(280)	17
Comprehensive income (loss)	$ (8,582)	$ (21,058)	$ 21,218	$ (41,194)

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Net Income (Loss) Per Common Share

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

The following dilutive outstanding securities were considered in the computation of diluted net income per share. Those that are antidilutive were not included in the computation of diluted net income (loss) per share (in thousands):

	June 30,	
	2005	2004
Options for common shares	5,610	6,168
Warrants for common shares	125	525
Convertible preference shares, notes, debentures and related interest, as if converted	38,827	3,818

The following is a reconciliation of the numerators and denominators of the basic and diluted net income (loss) per share (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Numerator				
Net income (loss)	$ (8,582)	$ (21,043)	$ 21,498	$ (41,211)
Interest on convertible long-term debt	—	—	1,754	—
Net income used for diluted net income (loss) per share	$ (8,582)	$ (21,043)	$ 23,252	$ (41,211)
Denominator				
Weighted average shares outstanding used for basic net income (loss) per share	86,253	84,391	85,997	84,281
Effect of dilutive stock options	—	—	52	—
Effect of convertible preference shares	—	—	3,818	—
Effect of convertible long-term debt	—	—	25,465	—
Weighted-average shares outstanding and dilutive securities used for diluted net income (loss) per share	86,253	84,391	115,332	84,281

Accrued Liabilities

Accrued liabilities consist of the following (in thousands):

	June 30, 2005	December 31, 2004
Accrued collaboration arrangement	$1,631	$ 9,144
Accrued payroll costs	2,818	4,804
Accrued co-development, net	—	3,361
Accrued legal fees	420	1,176
Accrued interest	1,563	—
Accrued clinical trial costs	110	214
Other	694	632
Total	$7,236	$ 19,331

Recent Accounting Pronouncements

In December of 2004, the FASB issued SFAS No. 123 (revised 2004), “Share-Based Payment”, which replaces SFAS No. 123, “Accounting for Stock-Based Compensation,” and supercedes APB Opinion No. 25, “Accounting for Stock Issued to Employees.” SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values beginning with the first annual period after June 15, 2005, with early adoption encouraged. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement

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recognition. XOMA is required to adopt SFAS 123R in the year beginning January 1, 2006. Under SFAS 123R, the Company must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at date of adoption. The transition methods include prospective and retroactive adoption options. Under the retroactive option, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter of adoption of SFAS 123R, while the retroactive method would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated.

The Company is evaluating the requirements of SFAS 123R and expects that the adoption of SFAS 123R may have a material impact on its consolidated results of operations and earnings per share. The Company has not yet determined the method of adoption or the effect of adopting SFAS 123R, and has not determined whether the adoption will result in amounts that are similar to the current pro forma disclosures under SFAS 123.

On April 15, 2005, with the approval of the Company's Board of Directors, the Company accelerated the vesting of all outstanding employee share options with an exercise price greater than $3.00 per share. Refer to "Share-Based Compensation" footnote above.

In May 2005, FASB issued Statement No. 154, "Accounting Changes and Error Corrections" ("SFAS 154"). SFAS 154 requires retrospective application to prior periods' financial statements of changes in accounting principle. It also requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings for that period rather than being reported in an income statement. The statement will be effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. The Company does not expect the adoption of SFAS 154 to have a material effect on the Company's consolidated financial position or results of operations.

2. COLLABORATIVE AND OTHER ARRANGEMENTS

In January of 2005, the Company announced a restructuring of its arrangement with Genentech on RAPTIVA®. Under the restructured arrangement, effective January 1, 2005, XOMA will be entitled to receive mid-single digit royalties on worldwide sales of RAPTIVA®. The previous cost and profit sharing arrangement for RAPTIVA® in the United States was discontinued, and Genentech will be responsible for all operating and development costs associated with the product. Genentech may elect and XOMA may agree to provide further clinical trial or other development services at Genentech's expense. In addition, XOMA's obligation to pay its outstanding balance to Genentech of $40.9 million under a development loan was extinguished. In 2004, XOMA recorded collaboration arrangement expense of $16.4 million, incurred an additional $3.9 million of RAPTIVA® costs included in its research and development expenses, and recorded $1.0 million in interest expense related to the development loan. In the first quarter of 2005, the Company recorded a one-time gain to other income of $40.9 million related to the extinguishment of the loan obligation.

In March of 2005, the Company was awarded a $15.0 million contract from the National Institute of Allergy and Infectious Diseases ("NIAID"), a part of the National Institutes of Health (NIH), to develop three anti-botulinum neurotoxin monoclonal antibody therapeutics. The contract work will be performed over an eighteen month period and will be 100% funded with Federal funds from NIAID under Contract No. HHSN266200500004C. The Company is recognizing revenue over the life of the contract as the services are performed and, as per the terms of the contract, a 10% retention on all revenue is being deferred and classified as a long-term receivable until completion of the contract. For the three and six months ended June 30, 2005, the Company recorded revenues of $0.5 and $1.1 million respectively.

In June of 2005, the Company announced that it has granted Merck & Co., Inc. ("Merck") a non-exclusive, worldwide license related to XOMA's bacterial cell expression technology. XOMA received and recognized in full an undisclosed access fee, and will receive milestones in the aggregate amount of $850,000 and royalties on future sales of any products subject to this license. The agreement also provides an option for Merck to use XOMA's bacterial cell expression technology to manufacture antibodies. Should Merck exercise this option, XOMA will receive an option fee, additional milestones in the aggregate amount of $850,000 and royalties.

In June of 2005, the Company announced the formation of a collaboration with Lexicon Genetics Inc. ("Lexicon") to jointly develop and commercialize novel antibodies for certain targets discovered by Lexicon and will share the responsibility and costs for research, preclinical, clinical, and commercialization activities, which along with any profits, will be allocated 65% to Lexicon and 35% to XOMA. XOMA will have principal responsibility for manufacturing antibodies for use in clinical trials and commercial sales.

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(unaudited)

In July of 2005, the Company announced its decision to terminate its exclusive worldwide license agreement with Zephyr Sciences, Inc. ("Zephyr") for the research, development and commercialization of products related to bactericidal/permeability-increasing protein (BPI), including its NEUPREX® product. The Company has no further rights or obligations under the terms of the original agreement with Zephyr nor will there be any additional costs related to the termination of the agreement.

3. SECURED NOTE AGREEMENT

In May of 2005, the Company executed a secured note agreement with Chiron Corporation ("Chiron"). Under the note agreement, Chiron agreed to make semi-annual loans to the Company, to fund up to 75% of the Company's research and development and commercialization costs under the collaboration arrangement, not to exceed $50.0 million in an aggregate principal amount. Any unpaid principal amount together with accrued and unpaid interest shall be due and payable in full on June 21, 2015, the tenth anniversary date of the advance date on which the first loan was made. Interest on the unpaid balance of the principal amount of each loan shall accrue at a floating rate per annum which was equal to 5.64% at June 30, 2005, and is payable semi-annually in June and December of each year. At the Company's election, the semi-annual interest payments can be added to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50.0 million. Loans under the note agreement are secured by the Company's interest in its collaboration with Chiron, including its share of any profits arising therefrom. At June 30, 2005, the outstanding balance under this note agreement totaled $8.8 million.

4. CONVERTIBLE DEBT

In February of 2005, XOMA issued $60.0 million of 6.5% convertible senior notes due February 1, 2012. The notes are initially convertible into approximately 32 million common shares at a conversion rate of 533.4756 of XOMA common shares per $1,000 principal amount of notes, which is equivalent to a conversion price of approximately $1.87 per common share. Before February 6, 2008, the Company may not redeem the notes. On or after February 6, 2008, the Company may redeem any or all of the notes at 100% of the principal amount, plus accrued and unpaid interest, if its common shares trade at 150% of the conversion price then in effect for 20 trading days in a 30 consecutive trading day period. Holders of the notes may require XOMA to repurchase some or all of the notes for cash at a repurchase price equal to 100% of the principal amount of the notes plus accrued and unpaid interest following a fundamental change as defined in the indenture governing the notes. In addition, following certain fundamental changes, the Company will increase the conversion rate up to 50 common shares per $1,000 principal amount of notes which would increase the number of shares into which the notes are convertible by up to 3 million common shares or, in lieu thereof, it may, in certain circumstances, elect to adjust the conversion rate and related conversion obligation so that the notes are convertible into shares of the acquiring, continuing or surviving company.

The notes were issued, to the initial purchasers, for net proceeds of $56.6 million. The issuance costs of approximately $3.4 million are being amortized on a straight-line basis over the 84 month life of the notes.

5. RESTRUCTURING CHARGES

During the quarter ended March 31, 2005, the Company restructured its clinical organization to a level needed to support its current clinical activity. As a result of the restructuring, the Company recorded charges of $461,000 for severance and related benefits. During the quarter ended June 30, 2005, $22,000 of these charges were released. None of these charges remained outstanding at June 30, 2005. These charges are included in research and development expenses.

(in thousands)	Severance and Related Benefits
Q1 2005	
Restructuring charges	$ 461
Amount paid	(131)
Accrued restructuring liabilities at March 31, 2005	330
Q2 2005	
Restructuring charges	(22)
Amount paid	(308)
Accrued restructuring liabilities at June 30, 2005	$ —

XOMA Ltd.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(unaudited)

6. LEGAL PROCEEDINGS

In November of 2004, a complaint was filed in the United States District Court, Northern District of California, in a lawsuit captioned Physicians Executive Business Corp. v. XOMA Ltd., et al., No. C 04 4878, by an investor in XOMA's common shares. The complaint asserts claims for alleged fraud and negligent misrepresentation relating to events preceding the announcement of Phase II trial results for XMP.629 in August of 2004. The complaint seeks unspecified compensatory damages. XOMA filed a motion to dismiss the complaint and that motion was granted with leave to amend on April 27, 2005. Plaintiff filed an amended complaint on May 20, 2005. The parties subsequently entered into an agreement to settle the litigation dated July 27, 2005, and the lawsuit was dismissed with prejudice on August 5, 2005. The Company believes that the resolution of this lawsuit will not have a material impact upon the Company's future consolidated financial position or results of operations.

In April of 2005, a complaint was filed in the Circuit Court of Cook County, Illinois, in a lawsuit captioned Hanna v. Genentech, Inc. and XOMA (US) LLC, No. 2005004386, by an alleged participant in one of the clinical trials of RAPTIVA®. The lawsuit was thereafter removed to the United States District Court, Northern District of Illinois, No. 05C 3251. The complaint asserts claims for alleged strict product liability and negligence against Genentech and XOMA based on injuries alleged to have occurred as a result of plaintiff's treatment in the clinical trials. The complaint seeks unspecified compensatory damages alleged to be in excess of $100,000. Although the Company has not yet fully assessed the merits of this lawsuit, it intends to vigorously investigate and pursue available defenses. The Company does not believe that this matter, or the resolution of this matter, will have a material impact upon the Company's future consolidated financial position or results of operations.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

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. On an on-going basis, we evaluate our estimates, including those related to terms of research collaborations, investments, stock compensation, impairment issues and the estimated useful life of assets and contingencies. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, the results of which form 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.

Results of Operations

Revenues

Revenues for the three and six months ended June 30, 2005, were $5.2 million and $8.2 million, respectively, compared with $0.8 million and $0.9 million for the same periods of 2004.

License and collaborative fees revenues were $2.7 million and $3.2 million for the three and six months ended June 30, 2005, compared with $0.8 million and $0.9 million for the three and six months ended June 30, 2004. These revenues include upfront and milestone payments related to the outlicensing of our products and technologies and other collaborative arrangements. The increases of $1.9 million and $2.3 million resulted primarily from an outlicensing agreement with Merck.

Contract revenues were $0.9 million and $2.2 million for the three and six months ended June 30, 2005, compared with zero for the same periods of 2004. The increase resulted primarily from clinical trial services performed on behalf of Genentech, Inc. ("Genentech") and contract manufacturing services performed under the NIAID contract entered into in March of 2005 to develop three anti-botulinum neurotoxin monoclonal antibody therapeutics. The contract work will be performed over an eighteen month period and will be 100% funded with Federal funds from NIAID under Contract No. HHSN266200500004C. We are recognizing revenue over the life of the contract as the services are performed and, as per the terms of the contract, a 10% retention on all revenue is being deferred and classified as a long-term receivable until completion of the contract.

Royalties were $1.6 million and $2.8 million for the three and six months ended June 30, 2005, compared with $21,000 and $36,000 for the three and six months ended June 30, 2004. The increase resulted primarily from RAPTIVA® royalties earned under our restructured arrangement with Genentech. Beginning on January 1, 2005, we are earning a mid-single digit royalty on worldwide sales of RAPTIVA®.

Research and development expenses consist of direct and research-related allocated overhead costs such as salaries and related personnel costs, facilities, patents, materials and supplies in addition to costs related to clinical trials to validate our testing processes and procedures and related overhead expenses. Research and development expenses include independent research and development and costs associated with collaborative research and development arrangements as well as contract research and development arrangements. Research and development expenses for the three and six months ended June 30, 2005, were $9.5 million and $19.5 million, respectively, compared with $12.9 million and $25.9 million for the same periods of 2004, a decrease of 26% and 24%, respectively. This decrease reflected decreases in spending on MLN2222, XMP.629, RAPTIVA®, TPO mimetic and new product research partially offset by increased spending on our oncology collaboration with Chiron, our NIAID contract and our anti-gastrin antibody collaboration with Aphton Corporation ("Aphton"). Additionally, research and development expenses included $0.4 million in costs for severance and benefits related to the first quarter 2005 restructuring of our clinical organization. This area was restructured to a level needed to support our current clinical activity.

Our research and development activities can be divided into earlier stage programs, which include molecular biology, process development, pilot-scale production and preclinical testing, and later stage programs, which include clinical testing, regulatory affairs and manufacturing clinical supplies. Using the current costing methods, the costs associated with these programs approximate the following (in thousands):

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Earlier stage programs	$ 7,080	$ 8,298	$ 15,712	$ 15,001
Later stage programs	2,467	4,564	3,837	10,876
Total	$ 9,547	$ 12,862	$ 19,549	$ 25,877

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

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Internal projects	$ 4,965	$ 7,485	$ 11,258	$ 16,106
External projects	4,582	5,377	8,291	9,771
Total	$ 9,547	$ 12,862	$ 19,549	$ 25,877

For the three months ended June 30, 2005, one development program (Chiron) accounted for more than 30% but less than 40% and no development program accounted for more than 40% of our total research and development expenses. For the six months ended June 30, 2005, one development program (Chiron) accounted for more than 20% but less than 30% and no development program accounted for more than 30% of our total research and development expenses. For the three and six months ended June 30, 2004, two development programs (MLN2222 and XMP.629) each individually accounted for more than 10% but less than 20% and no development program accounted for more than 20% of our total research and development expenses.

General and administrative expenses include salaries and related personnel costs, facilities costs and professional fees. General and administrative expenses for the three and six months ended June 30, 2005, were $3.7 million and $7.5 million compared with $3.6 million and $7.5 million for the three and six months ended June 30, 2004, respectively.

Collaborative arrangement expenses, which related exclusively to RAPTIVA®, were zero for the three and six months ended June 30, 2005, compared with $5.2 and $8.4 million for the same periods in 2004, respectively. The 2004 amounts reflect our 25% share of commercialization costs for RAPTIVA® in excess of Genentech's revenues less cost of goods sold and research and development cost sharing adjustments. Because of the restructuring of our arrangement with Genentech, which was effective January 1, 2005, we are no longer responsible for a share of operating costs or research and development expenses, but rather we are entitled to receive royalties on worldwide sales. Genentech will be responsible for all development costs and, to the extent that we provide further clinical trial support or other development services for RAPTIVA®, we will be compensated by Genentech. The prior year collaborative arrangement expenses are as follow (in thousands):

(in thousands)	Three Months Ended June 30, 2004	Six Months Ended June 30, 2004
Net collaborative loss before R&D expense	$ (4,622)	$ (8,447)
R&D co-development benefit (charge)	(569)	18
Total collaboration arrangement expense	$ (5,191)	$ (8,429)

Investment and interest income for the three and six months ended June 30, 2005, was $0.4 million and $1.0 million, respectively, compared with $0.1 million and $0.3 million for the same periods of 2004. The increases of $0.3 million and $0.7 million resulted primarily from increased interest rates and a higher cash balance. Additionally, the increase for the six months ended June 30, 2005, includes a gain on the sale of our remaining short-term investments during the first quarter of 2005.

Interest expense for the three and six months ended June 30, 2005 was $1.1 million and $1.8 million, respectively, compared with $0.3 million and $0.6 million for the same periods of 2004. The increases of $0.8 million and $1.2 million in 2005 compared with 2004 resulted primarily from the interest incurred on our $60.0 million aggregate principal amount of convertible senior notes issued in February of 2005 partially offset by a reduction in interest as a result of the repayment of our Genentech and Millennium Pharmaceuticals, Inc. ("Millennium") convertible notes which were outstanding in 2004.

Other income for the three and six months ended June 30, 2005, was $0.3 and $41.2 million, respectively, compared with zero for the three and six months ended June 30, 2004. The increase for the six months ending June 30, 2005, reflects a one-time gain related to the extinguishment of the Genentech development loan that was outstanding at December 31, 2004, as a result of the restructuring of the Genentech agreement, which was announced in January of 2005, and proceeds of $250,000 from the sale of our issued patents and patent applications related to gelonin and gelonin fusion technology to Research Development Foundation ("RDF") in June of 2005.

Provision for income taxes for the three and six months ended June 30, 2005 was $38,000 and $38,000, respectively, compared with zero for the comparable periods in 2004. The provision is related to activities of our foreign operations.

Liquidity and Capital Resources

Cash, cash equivalents and short-term investments at June 30, 2005, was $55.8 million compared with $24.3 million at December 31, 2004. This $31.5 million increase primarily reflects cash from our February financing of $56.6 million and the June drawdown on our Chiron loan facility of $8.8 million partially offset by cash used in operations of $32.3 million.

Net cash used in operating activities was $32.3 million for the six months ended June 30, 2005, compared with $12.7 million for the six months ended June 30, 2004. Net cash used in operating activities for the six months ended June 30, 2005, resulted primarily from net income of $21.5 million, depreciation and amortization of $2.2 million, common shares issued under employee 401(k) and management incentive plans of $1.3 million and accrued interest on convertible notes of $1.6 million more than offset by the gain on extinguishment of long-term debt of $40.9 million, the gain on sale of investments of $0.3 million, an increase in receivables of $3.8 million, a decrease in accrued liabilities of $13.7 million and a net increase in other assets and liabilities of $0.4 million. Net cash used in operating activities for the six months ended June 30, 2004, resulted primarily from a net loss of $41.2 million partially offset by depreciation and amortization of $2.2 million, common shares issued under employee 401(k) and management incentive plans of $0.9 million and a net increase in assets and liabilities of $25.4 million.

Net cash used in investing activities for the six months ended June 30, 2005, was $1.0 million compared with $1.4 million for the six months ended June 30, 2004. The $0.4 million decrease in 2005 compared with 2004 reflected $0.5 million in proceeds from the sale of short-term securities.

Net cash provided by financing activities was $65.2 million for the six months ended June 30, 2005, compared with cash used in financing activities of $16.7 million for the six months ended June 30, 2004. Financing activities for the first six months of 2005 consisted of an issuance of convertible senior notes for net proceeds of $56.6 million, a drawdown on our Chiron loan facility of $8.8 million and $0.1 million in proceeds from the issuance of common shares partially offset by capital lease payments of $0.1 million and payments of short-term loan obligations of $0.1 million. Financing activities for the first six months of 2004 consisted of a $13.2 million payment on our short-term loan obligation, a $5.0 million payment of our convertible debt to Millenium and $0.3 million in capital lease payments partially offset by $1.3 million in proceeds from the issuance of common shares and $0.5 million proceeds from a short term loan.

In February of 2005, we issued $60.0 million of 6.5% convertible senior notes due February 1, 2012. The notes are initially convertible into approximately 32 million common shares at a conversion rate of 533.4756 of XOMA common shares per $1,000 principal amount of notes, which is equivalent to a conversion price of approximately $1.87 per common share. Before February 6, 2008, we may not redeem the notes. On or after February 6, 2008, we may redeem any or all of the notes at 100% of the principal amount, plus accrued and unpaid interest, if our common shares trade at 150% of the conversion price then in effect for 20 trading days in a 30 consecutive trading day period. Holders of the notes may require us to repurchase some or all of the notes for cash at a repurchase price equal to 100% of the principal amount of the notes plus accrued and unpaid interest following a fundamental change as defined in the indenture governing the notes. In addition, following certain fundamental changes, we will increase the conversion rate up to 50 common shares per $1,000 principal amount of notes which would increase the number of shares into which the notes are convertible by up to 3 million common shares or, in lieu thereof, it may, in certain circumstances, elect to adjust the conversion rate and related conversion obligation so that the notes are convertible into shares of the acquiring, continuing or surviving company. The notes were issued, to the initial purchasers, for net proceeds of $56.6 million. The issuance costs of approximately $3.4 million are being amortized on a straight-line basis over the 84 month life of the notes.

In May of 2005, we executed a secured note agreement with Chiron. Under the note agreement, Chiron agreed to make semi-annual loans to us, to fund up to 75% of the our research and development and commercialization costs under the collaboration arrangement, not to exceed $50.0 million in an aggregate principal amount. Any unpaid principal amount together with accrued and unpaid interest shall be due and payable in full on June 21, 2015, the tenth anniversary date of the advance date on which the first loan was made. Interest on the unpaid balance of the principal amount of each loan shall accrue at a floating rate per annum which was 5.64% at June 30, 2005, and is payable semi-annually in June and December of each year. At our election, we may add the semi-annual interest payments to the outstanding principal amount, in lieu of a cash payment, as long as the aggregate principal amount does not exceed $50.0 million. Loans under the note agreement are secured by our interest in our collaboration with Chiron, including our share of any profits arising therefrom. At June 30, 2005, the outstanding balance under this note agreement totaled $8.8 million.

Our cash, cash equivalents and short-term investments are expected to decrease through 2005 with the use of cash to fund ongoing operations.

Based on current spending levels, anticipated revenues, collaborator funding, proceeds from our convertible senior note offering in February of 2005 and other sources of funding we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs through at least 2008. 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. Additional licensing arrangements or collaborations or our otherwise entering into new equity or currently unanticipated financing arrangements could extend this period. Progress or setbacks by potentially competing products may also affect our ability to raise new funding on acceptable terms.

Critical Accounting Policies

Critical accounting policies are those that require significant judgment and/or estimates by management at the time that the financial statements are prepared such that materially different results might have been reported if other assumptions had been made. We consider certain accounting policies related to revenue recognition and recognition of research and development expenses to be critical policies. We believe there have been no significant changes to our critical accounting policies since we filed our 2004 Annual Report on Form 10-K with the Securities and Exchange Commission on March 15, 2005. For a description of our critical accounting policies, please refer to our 2004 Annual Report on Form 10-K.

Recent Accounting Pronouncements

In December of 2004, the FASB issued SFAS No. 123 (revised 2004), "Share-Based Payment" ("SFAS 123R"), which replaces SFAS No. 123, "Accounting for Stock-Based Compensation," ("SFAS 123") and supercedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS 123R requires all share-based payments to employees, including grants of employee stock options, to be recognized in the financial statements based on their fair values beginning with the first annual period after June 15, 2005, with early adoption encouraged. The pro forma disclosures previously permitted under SFAS 123 no longer will be an alternative to financial statement recognition. We are required to adopt SFAS 123R beginning January 1, 2006. Under SFAS 123R, we must determine the appropriate fair value model to be used for valuing share-based payments, the amortization method for compensation cost and the transition method to be used at date of adoption. The transition methods include prospective and retroactive adoption options. Under the retroactive option, prior periods may be restated either as of the beginning of the year of adoption or for all periods presented. The prospective method requires that compensation expense be recorded for all unvested stock options and restricted stock at the beginning of the first quarter of adoption of SFAS 123R, while the retroactive method would record compensation expense for all unvested stock options and restricted stock beginning with the first period restated.

We are evaluating the requirements of SFAS 123R and expect that the adoption of SFAS 123R may have a material impact on our consolidated results of operations and earnings per share. We have not yet determined the method of adoption or the effect of adopting SFAS 123R, and have not determined whether the adoption will result in amounts that are similar to the current pro forma disclosures under SFAS 123.

On April 15, 2005, with the approval of the Board of Directors, we accelerated the vesting of all outstanding employee share options with an exercise price greater than $3.00 per share. Because the exercise price of all the accelerated options exceeded the market price per share of the common shares as of the new measurement date, the acceleration had no impact on the our earnings for the three and six months ended June 30, 2005. The modification to our outstanding employee share options will allow expense recognized in future financial statements to better reflect our compensation strategies under SFAS 123R, which we will adopt as of January 1, 2006.

In May 2005, FASB issued Statement No. 154, "Accounting Changes and Error Corrections" ("SFAS 154"). SFAS 154 requires retrospective application to prior periods' financial statements of changes in accounting principle. It also requires that the new accounting principle be applied to the balances of assets and liabilities as of the beginning of the earliest period for which retrospective application is practicable and that a corresponding adjustment be made to the opening balance of retained earnings for that period rather than being reported in an income statement. The statement will be effective for accounting changes and corrections of errors made in fiscal years beginning after December 15, 2005. We do not expect the adoption of SFAS 154 to have a material effect on our consolidated financial position or results of operations.

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

Certain statements contained herein related to the sufficiency of our cash resources, future sales of RAPTIVA®, our potential for profitability, as well as other statements related to current plans for product development and existing and potential collaborative and licensing relationships, or that otherwise relate to future periods, are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements are based on assumptions that may not prove accurate. Actual results could differ materially from those anticipated due to certain risks inherent in the biotechnology industry and for companies engaged in the development of new products in a regulated market. Among other things, the period for which our cash resources are sufficient could be shortened if expenditures are made earlier or in larger amounts than anticipated or are unanticipated, if anticipated revenues or cost sharing arrangements do not materialize, or if funds are not otherwise available on acceptable terms; the sales efforts for RAPTIVA® may not be successful if Genentech or its partner, Serono, S.A. ("Serono"), fails to meet its commercialization goals, due to the strength of the competition, if physicians do not adopt the product as treatment for their patients or if remaining regulatory approvals are not obtained; and our ability to achieve profitability will depend on the success of the sales efforts for RAPTIVA®, revenues related to development services we provide, our ability to effectively anticipate and manage our expenditures and the availability of capital market and other financing. These and other risks, including those related to the results of 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 Food and Drug Administration ("FDA"), European or other regulators or their advisory bodies; and analysis or interpretation by, or submission to, these entities or others of scientific data); changes in the status of existing collaborative relationships; the ability of collaborators and other partners to meet their obligations; our ability to meet the demand of the United States government agency with which we have entered our first government contract; competition; market demands for products; scale-up and marketing capabilities; availability of additional licensing or collaboration opportunities; international operations; share price volatility; our financing needs and opportunities; uncertainties regarding the status of biotechnology patents; uncertainties as to the costs of protecting intellectual property; and risks associated with our status as a Bermuda company, are described in more detail in the remainder of this section.

The Marketing And Sales Effort In Support Of The Only Product In Which We Have An Interest That Has Received Regulatory Approval May Not Be Successful.

RAPTIVA®, the only product in which we have an interest that has received regulatory approval, was approved by the FDA on October 27, 2003, for the treatment of chronic moderate-to-severe plaque psoriasis in adults who are candidates for systemic therapy or phototherapy. Genentech and Serono, Genentech's international marketing partner for RAPTIVA®, are responsible for the marketing and sales effort in support of this product. In September of 2004, Serono announced that RAPTIVA® had received approval for use in the European Union and the product was launched in several European Union countries in the fourth quarter of 2004. We have no role in marketing and sales efforts. Under our current arrangement with Genentech, we are entitled to receive royalties on worldwide sales of RAPTIVA®. Successful commercialization of this product is subject to a number of risks, including Genentech's and Serono's ability to implement their marketing and sales effort and achieve sales, the strength of competition from other products being marketed or developed to treat psoriasis, the occurrence of adverse events which may give rise to safety concerns, physicians' and patients' acceptance of RAPTIVA® as a treatment for psoriasis, Genentech's ability to provide manufacturing capacity to meet demand for the product, and pricing and reimbursement issues. Certain of these risks are discussed in more detail below.

Because Our Products 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 Which Could Adversely Affect Your Investment.

If adequate funds are not available, we may have to raise additional funds in a manner that may dilute or otherwise adversely affect the rights of existing shareholders, curtail or cease operations, or file for bankruptcy protection in extreme circumstances. We have spent, and we expect to continue to spend, substantial funds in connection with:

- research and development relating to our products and production technologies,
- expansion of our production capabilities,
- various human clinical trials, and
- protection of our intellectual property.

Based on current spending levels, anticipated revenues, collaborator funding, proceeds from our convertible senior note offering in February of 2005 and other sources of funding we believe to be available, we estimate that we have sufficient cash resources to meet our anticipated net cash needs through at least 2008. 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. Additional licensing arrangements or collaborations or our otherwise entering into new equity or currently unanticipated financing arrangements could extend this period. 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.

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

Most Of Our Therapeutic Products Have Not Received Regulatory Approval. If These Products Do Not Receive Regulatory Approval, Neither Our Third Party Collaborators Nor We Will Be Able To Manufacture And Market Them.

Our products cannot be manufactured and marketed in the United States and other countries without required regulatory approvals. Only one of our therapeutic products, RAPTIVA®, has received regulatory approval. The United States government and governments of other countries extensively regulate many aspects of our products, including:

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

In the United States, the FDA regulates pharmaceutical products under the Federal Food, Drug, and Cosmetic Act and other laws, including, in the case of biologics, the Public Health Service Act. At the present time, we believe that most of our products will be regulated by the FDA as biologics. The review of therapeutic biologic products has been transferred within the FDA from the Center for Biologics Evaluation and Research to the Center for Drug Evaluation and Research, the body that reviews drug products. Because implementation of this plan may not be complete, we do not know when or how this change will affect us. 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. Even if the FDA or other regulatory agency approves a product candidate, the approval may impose significant restrictions on the indicated uses, conditions for use, labeling, advertising, promotion, marketing and/or production of such product. Even for approved products such as RAPTIVA®, the FDA may impose ongoing requirements for post-approval studies, including additional research and development and clinical trials, and may subsequently withdraw approval based on these additional trials. The FDA and other agencies also may impose various civil or criminal sanctions for failure to comply with regulatory requirements, including withdrawal of product approval. State regulations may also affect our proposed products.

The FDA has substantial discretion in both the product approval process and manufacturing facility approval process and, as a result of this discretion and uncertainties about outcomes of testing, we cannot predict at what point, or whether, the FDA will be satisfied with our or our collaborators' submissions or whether the FDA will raise questions which may be material and delay or preclude product approval or manufacturing facility approval. As we accumulate additional clinical data, we will submit it to the FDA, which may have a material impact on the FDA product approval process.

Our potential products 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 products.

For example,

- In 1996, in conjunction with Genentech, we began testing RAPTIVA® in patients with moderate-to-severe plaque psoriasis. In April of 2002, Genentech and we announced that a pharmacokinetic study conducted on RAPTIVA® comparing XOMA-produced material and Genentech-produced material did not achieve the pre-defined statistical definition of comparability, and the FDA requested that another Phase III study be completed before the filing of a Biologics License Application for RAPTIVA®, delaying the filing beyond the previously-planned time frame of the summer of 2002. In March of 2003, we announced completion of enrollment in a Phase II study of RAPTIVA® in patients suffering from rheumatoid arthritis. In May of 2003, Genentech and we announced our decision to terminate Phase II testing of RAPTIVA® in patients suffering from rheumatoid arthritis based on an evaluation by an independent Data Safety Monitoring Board that suggested no overall net clinical benefit in patients receiving the study drug. We also completed enrollment in a Phase II study of RAPTIVA® as a possible treatment for patients with psoriatic arthritis. In March of 2004, we announced that the study did not reach statistical significance.
- In December of 1992, we began human testing of our NEUPREX® product, a genetically engineered fragment of a particular human protein, and licensed certain worldwide rights to Baxter Healthcare Corporation ("Baxter") in January of 2000. In April of 2000, members of the FDA and representatives of XOMA and Baxter discussed results from the Phase III trial that tested NEUPREX® in pediatric patients with a potentially deadly bacterial infection called meningococcemia, and senior representatives of the FDA indicated that the data presented were not sufficient to support the filing of an application for marketing approval at that time.
- In 2003, we completed two Phase I trials of XMP.629, a BPI-derived topical peptide compound targeting acne, evaluating the safety, skin irritation and pharmacokinetics. In January of 2004, we announced the initiation of Phase II clinical testing in patients with mild-to-moderate acne. In August of 2004, we announced the results of a Phase II trial with XMP.629 gel. The results were inconclusive in terms of clinical benefit of XMP.629 compared with vehicle gel.

Given that regulatory review is an interactive and continuous process, we maintain 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.

Because All Of Our Products 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 June 30, 2005, we had an accumulated deficit of $656.9 million.

For the six months ended June 30, 2005, as a result of the restructuring of our Genentech arrangement and subsequent extinguishment of our obligation to pay $40.9 million under a development loan and related one-time credit to other income, we had a net income of approximately $21.5 million or $0.25 per common share (basic) and $0.20 per common share (diluted). For the year ended December 31, 2004, we had a net loss of approximately $78.9 million, or $0.93 per common share (basic and diluted). We expect to incur additional losses in the future.

Our ability to achieve profitability is dependent in large part on the success of our development programs, obtaining regulatory approval for our products 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 all of our products 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.

Our Agreements With Third Parties, Many Of Which Are Significant To Our Business, Expose Us To Numerous Risks

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

- In April of 1996, we entered into an agreement with Genentech whereby we agreed to co-develop Genentech's humanized monoclonal antibody product RAPTIVA®. In April of 1999, March of 2003, and January of 2005, the companies amended the agreement. In October of 2003, RAPTIVA® was approved by the FDA for the treatment of adults with chronic moderate-to-severe plaque psoriasis who are candidates for systemic therapy or phototherapy and, in September of 2004, Serono announced the product's approval in the European Union. In January of 2005, we entered into a restructuring of our collaboration agreement with Genentech which ended our existing cost and profit sharing arrangement related to RAPTIVA® in the U.S. and entitles us to a royalty interest on worldwide net sales.

- In November of 2001, we entered into a collaboration with Millennium to develop two of Millennium's products for certain vascular inflammation indications. In October of 2003, we announced that we had discontinued one of these products, MLN2201. In December of 2003, we announced the initiation of Phase I testing on the other product, MLN2222.
- In March of 2004, we announced we had agreed to collaborate with Chiron for the development and commercialization of antibody products for the treatment of cancer. Under the terms of the agreement, the companies will jointly research, develop, and commercialize multiple antibody product candidates. In April of 2005, we announced the initiation of clinical testing of the first product candidate out of the collaboration, CHIR-12.12, an anti-CD40 antibody.
- In September of 2004, we entered into a collaboration with Aphton for the treatment of gastrointestinal and other gastrin-sensitive cancers using anti-gastrin monoclonal antibodies.
- In October of 2004, we announced the licensing of our ING-1 product to Triton BioSystems, Inc. ("Triton") for use with their TNT™ System.
- In March of 2005, we entered into a contract with the NIAID, a part of the National Institutes of Health, to produce three botulinum neurotoxin monoclonal antibodies designed to protect U.S. citizens against the harmful effects of biological agents used in bioterrorism.
- In June of 2005, we announced the formation of a collaboration to jointly develop and commercialize antibody drugs for certain targets discovered by Lexicon.
- We have licensed our bacterial cell expression ("BCE") technology, an enabling technology used to discover and screen, as well as develop and manufacture, recombinant antibodies and other proteins for commercial purposes, to approximately 35 companies. As of June 30, 2005, we were aware of two antibody products in late-stage clinical testing which are manufactured using our BCE technology: Celltech Group plc's CIMZIA™(CDP870) anti-TNFalpha antibody fragment for rheumatoid arthritis and Crohn's disease and Genentech's Lucentis™ (ranibizumab) antibody fragment to vascular endothelial growth factor for wet age-related macular degeneration.

Because our collaborators and licensees are independent third parties, they may be subject to different risks than we are and have significant discretion in determining the efforts and resources they will apply. If these collaborators and licensees do not successfully develop and market these products, we may not have the capabilities, resources or rights to do so on our own. We do not know whether Aphton, Celltech, Chiron, Genentech, Lexicon, Millennium or Triton will successfully develop and market any of the products that are or may become the subject of one of our collaboration or licensing arrangements. In particular, each of these arrangements provides for either sharing of collaboration expenses, which means that not only we but our collaborators must have sufficient available funds for the collaborations to continue, or funding solely by our collaborators or licensees. In addition, our collaboration with Chiron provides for funding by it in the form of periodic loans, and we cannot be certain that Chiron will have the necessary funds available when these loans are to be made. Furthermore, our contract with NIAID contains numerous standard terms and conditions provided for in the applicable federal acquisition regulations and customary in many government contracts. Uncertainty exists as to whether we will be able to comply with these terms and conditions in a timely manner, if at all. In addition, given that this contract is our first with NIAID or any other governmental agency, we are uncertain as to the extent of NIAID's demands and the flexibility that will be granted to us in meeting those demands. Lastly, neither CIMZIA™(CDP870) nor Lucentis™ has received marketing approval from the FDA or any foreign governmental agency, and therefore we cannot assure you that either product will prove to be safe and effective, will be approved for marketing or will be successfully commercialized.

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

- In January of 2001, we entered into a strategic process development and manufacturing alliance with Onyx Pharmaceuticals, Inc. ("Onyx") to scale-up production to commercial volume of one of Onyx's cancer products. In June of 2003, Onyx

notified us that it was discontinuing development of the product and terminating the agreement so that it could focus on another of its anticancer compounds.

- In December of 2003, we agreed to collaborate with Alexion Pharmaceuticals, Inc. ("Alexion") for the development and commercialization of an antibody to treat chemotherapy-induced thrombocytopenia. The TPO mimetic antibody was designed to mimic the activity of human thrombopoietin, a naturally occurring protein responsible for platelet production. In November of 2004, in conjunction with Alexion, we determined that the lead molecule in our TPO mimetic collaboration did not meet the criteria established in the program for continued development. In the first quarter of 2005, the companies determined not to continue with this development program and in the second quarter of 2005, the collaboration was terminated.
- In November of 2004, we announced the licensing of our BPI product platform, including our NEUPREX® product, to Zephyr. In July of 2005, we announced our decision to terminate the license agreement with Zephyr due to Zephyr not meeting the financing requirements of the license agreement.

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.

Certain Of Our Technologies Are Relatively New And Are In-Licensed From Third Parties, So Our Capabilities Using Them Are Unproven And Subject To Additional Risks.

Primarily as a result of our BCE technology licensing program, we have access to numerous phage display technologies licensed to us by other parties. However, our experience with these technologies remains relatively limited and, to varying degrees, we are still dependent on the licensing parties for training and technical support for these technologies. In addition, our use of these technologies is limited by certain contractual provisions in the licenses relating to them and, although we have obtained numerous licenses, intellectual property rights in the area of phage display are particularly complex. We cannot be certain that these restrictions or the rights of others will not impede our ability to utilize these technologies.

Because We Have No History Of Profitability And Because The Biotechnology Sector Has Been Characterized By Highly Volatile Stock Prices, Announcements We Make And General Market Conditions For Biotechnology Stocks Could Result In A Sudden Change In The Value Of Our Common Shares.

As a biopharmaceutical company, we have experienced significant volatility in our common shares. Fluctuations in our operating results and general market conditions for biotechnology stocks could have a significant impact on the volatility of our common share price. From January 1, 2004 through August 2, 2005, our share price has ranged from a high of $2.74 to a low of $0.98. On August 2, 2005, the closing price of the common shares as reported on the Nasdaq National Market was $1.69 per share. Factors contributing to such volatility include, but are not limited to:

- sales and estimated or forecasted sales of products,
- results of preclinical studies and clinical trials,
- information relating to the safety or efficacy of products,
- 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,
- announcements of technological innovations or new indications for our therapeutic products,
- government regulations,
- developments in patent or other proprietary rights,

- the number of shares 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.

We Or Our Third Party Collaborators Or Licensees May Not Be Able To Increase Existing Or Acquire New Manufacturing Capacity Sufficient To Meet Market Demand.

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

We Do Not Know Whether There Will Be A Viable Market For RAPTIVA® Or Our Other Products.

Even though Genentech and we received approval in the United States in October of 2003 to market RAPTIVA® and in the European Union in 2004 and even if we receive regulatory approval for our other products, our products may not be accepted in the marketplace. 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 RAPTIVA® if they believe other products to be more effective or are more comfortable prescribing other products. In addition, safety concerns may arise in the course of on-going clinical trials or patient treatment as a result of adverse events or reactions. Consequently, we do not know if physicians or patients will adopt or use our products for their approved indications.

Other Companies May Render Some Or All Of Our Products Noncompetitive Or Obsolete.

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

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

These factors may enable others to develop products and processes competitive with or superior to our own or those of our collaborators. In addition, a significant amount of research in biotechnology is being carried out in universities and other non-profit research organizations. These entities are becoming increasingly interested in the commercial value of their work and may become more aggressive in seeking patent protection and licensing arrangements.

Furthermore, 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.

Without limiting the foregoing, we are aware that:

- In April of 2004, Amgen Inc. and its partner Wyeth Pharmaceuticals, a division of Wyeth, announced that their rheumatoid arthritis and psoriatic arthritis drug, Enbrel®, had been approved by the FDA for the same psoriasis indication as RAPTIVA® and, in September of 2004, they announced that the product received approval in the European Union in this same indication;
- Biogen Idec Inc. has been marketing Amevive® in the U.S. to treat the same psoriasis indication as RAPTIVA® and announced in October of 2004 that it had received approval in Canada;
- Biogen Idec Inc. and Fumapharm AG have taken their psoriasis-treating pill, BG-12, through a Phase III trial in Germany in which, according to the companies, the product significantly reduced psoriasis symptoms in patients;
- Centocor, Inc., a unit of Johnson & Johnson, has announced that it has tested its rheumatoid arthritis and Crohn's disease drug, Remicade®, in psoriasis, showing clinical benefits, and that the drug has been approved to treat psoriatic arthritis in the U.S. and, in combination with methotrexate, in the European Union;
- Abbott Laboratories has presented data from a Phase II psoriasis trial showing clinical benefits of its rheumatoid arthritis drug Humira™;
- Isotechnika, Inc. has begun a Canadian Phase III trial of ISA247, a trans-isomer of a cyclosporine analog, in 400 patients with moderate to severe psoriasis; and
- other companies are developing monoclonal antibody or other products for treatment of inflammatory skin disorders.

It is possible that other companies may be developing other products based on the same human protein as our NEUPREX® product, and these products may prove to be more effective than NEUPREX®.

There are at least two competitors developing a complement inhibitor which may compete with MLN2222. Alexion and its partner Proctor & Gamble have initiated enrollment in a second Phase III trial of pexelizumab, a monoclonal antibody. This study is expected to enroll approximately 4,000 patients undergoing coronary artery bypass graft surgery. TP10 is a complement inhibitor developed by AVANT Immunotherapeutics Inc. ("AVANT") for applications including the limitation of complement-mediated damage following surgery on cardiopulmonary by-pass. AVANT anticipates completing enrollment in the Phase IIb study in 200-300 women undergoing cardiac bypass surgery as soon as possible. AVANT is also working closely with its partner, Lonza Biologics plc, to complete process development and scale-up efforts in preparation for the production of Phase III clinical materials and the start of that trial by year-end 2005.

Currently, there are at least two companies developing topical peptide treatments for acne which may compete with XMP.629. Migenix Inc., formerly Micrologix Biotech, Inc., is developing MBI 594AN, a topical peptide that has completed a Phase IIB trial for the treatment of acne, and Helix Biomedix, Inc. is developing several peptide compounds.

In collaboration with Chiron, we are co-developing the monoclonal antibody target CD40, and, at the current time, there are several CD40-related programs under development, mostly focused on the development of CD40 ligand products. For example, SGN-40 is a humanized monoclonal antibody under development by Seattle Genetics, Inc. which is targeting CD40 antigen. SGN-40 is currently in Phase I studies in multiple myeloma and non-Hodgkin's lymphoma, with an additional Phase I study in chronic lymphocytic leukemia to begin in 2005. Another example is 5d12, an anti-CD40 antibody under development by Tanox, Inc. for Crohn's disease. Chiron licensed the antibody to Tanox, Inc. in 1995 and retains some commercialization and technology rights.

Even If We Or Our Third Party Collaborators Or Licensees Bring Products To Market, We May Be Unable To Effectively Price Our Products Or Obtain Adequate Reimbursement For Sales Of Our Products, Which Would Prevent Our Products From Becoming Profitable.

If we or our third party collaborators or licensees succeed in bringing our product candidates to the market, they may not be considered cost-effective, and reimbursement to the patient may not be available or may not be sufficient to allow us to sell our products on a competitive basis. In both the United States and elsewhere, sales of medical products and treatments are dependent, in part, on the availability of reimbursement to the patient from third-party payors, such as government and private insurance plans. Third-party payors are increasingly challenging the prices charged for pharmaceutical products and services. Our business is affected by the efforts of government and third-party payors to contain or reduce the cost of health care 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.

If Our And Our Partners' Patent Protection For Our Principal Products And Processes Is Not Enforceable, We May Not Realize Our Profit Potential.

Because of the length of time and the expense associated with bringing new products to the marketplace, we and our partners hold and are in the process of applying for a number of patents in the United States and abroad to protect our products 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 patent position of biotechnology companies generally is highly uncertain and involves complex legal and factual questions, and no consistent policy regarding the breadth of allowed claims has emerged from the actions of the U.S. Patent and Trademark Office with respect to biotechnology patents. Legal considerations surrounding the validity of biotechnology patents continue to be in transition, historical legal standards surrounding questions of validity may not continue to be applied and current defenses as to issued biotechnology patents may not in fact be considered substantial in the future. These factors have contributed to uncertainty as to:

- the degree and range of protection any patents will afford against competitors with similar technologies,
- if and when patents will issue,
- whether or not others will obtain patents claiming aspects similar to those covered by our patent applications, or
- the extent to which we will be successful in avoiding infringement of any patents granted to others.

We have established an extensive portfolio of patents and applications, both U.S. and foreign, related to our BPI-related products, including novel compositions, their manufacturer, formulation, assay and use. We have also established a portfolio of patents, both U.S. and foreign, related to our BCE 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.

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 not be honored 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.

Protecting Our 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, if the litigation included a claim of infringement by us of another party's patent that was 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.

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 purchases of our shares. Because we do not currently have any such arrangements, we cannot be certain how the purchase price of such shares, the relevant market price

or premium, if any, will be determined or when such determinations will be made. Any such arrangement could result in dilution in the value of our shares.

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.

The same factors that affect us directly because we are a biotechnology company 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 or 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 BCE 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'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.

Because We Are A Relatively Small Biopharmaceutical Company With Limited Resources, We May Not Be Able To Attract And Retain Qualified Personnel, And The Loss Of Key Personnel Could Delay Or Prevent Achieving Our Objectives.

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. There is intense competition for such personnel. 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 L. Castello, our Chairman of the Board, President and Chief Executive Officer; Patrick J. Scannon, M.D., Ph.D., our Senior Vice President and Chief Scientific and Medical Officer; J. David Boyle II, our Vice President, Finance and Chief Financial Officer; and Christopher J. Margolin, our Vice President, General Counsel and Secretary. We have employment agreements with each of these executive officers. We currently have no key person insurance on any of our employees.

We Are Exposed To An Increased Risk Of Product Liability Claims.

The testing, marketing and sales of medical products entails an inherent risk of allegations of product liability. We believe that we currently have adequate levels of insurance for our development and manufacturing activities; however, in the event of one or more large, unforeseen awards, such levels may not provide adequate coverage. A significant product liability claim for which we

were not covered by insurance would have to be paid from cash or other assets. To the extent we have sufficient insurance coverage, such a claim would result in higher subsequent insurance rates.

We May Be Subject To Increased Risks Because We Are A Bermuda Company.

Alleged abuses by certain companies that have changed their legal domicile from jurisdictions within the United States to Bermuda have created an environment where, notwithstanding that we changed our legal domicile in a transaction that was approved by our shareholders and fully taxable to our company under U.S. law, we may be exposed to various prejudicial actions, including:

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

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

If You Were To Obtain A Judgment Against Us, It May Be Difficult To Enforce Against Us Because We Are A Foreign Entity.

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

Our Shareholder Rights Agreement Or Bye-laws May Prevent Transactions That Could Be Beneficial To Our Shareholders And May Insulate Our Management From Removal.

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

Our bye-laws:

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

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

ITEM 3. 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. We do not invest in derivative financial instruments. By policy, we make our investments in high quality debt securities, limit the amount of credit exposure to any one issuer, limit duration by restricting the term of the instrument and hold investments to maturity except under rare circumstances.

In February of 2005, we issued $60.0 million of 6.5% convertible senior notes due in 2012.

In June of 2005, we drew down a loan of $8.8 million against a $50.0 million secured note that is due in 2015 at an interest rate of 5.64%.

The table below presents the amounts and related weighted interest rates of our cash equivalents in overnight funds and commercial paper at June 30, 2005 and December 31, 2004:

	Maturity	Fair Value (in thousands)	Average Interest Rate
June 30, 2005	Daily	$ 55,769	3.23%
December 31, 2004	Daily	$ 23,808	2.06%

ITEM 4. CONTROLS AND PROCEDURES

Under the supervision and with the participation of our management, including our Chairman of the Board, President and 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-14(c) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this report. Based on this evaluation, our Chairman of the Board, President and Chief Executive Officer and our Vice President, Finance and Chief Financial Officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to us and our consolidated subsidiaries required to be included in our periodic SEC filings.

We are continuing to enhance internal financial controls and staffing consistent with the requirements of the Sarbanes-Oxley Act of 2002. Apart from this, there were no changes in our internal controls over financial reporting during 2005 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial accounting.

Management's Report on Internal Control over Financial Reporting

Management, including our Chairman of the Board, President and Chief Executive Officer and our Vice President, Finance and Chief Financial Officer, is responsible for establishing and maintaining adequate internal control over financial reporting. 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 generally accepted accounting principles.

Management assessed the effectiveness of our internal control over financial reporting as of June 30, 2005. 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 June 30, 2005, our internal control over financial reporting is effective based on those criteria.

PART II - OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

In November of 2004, a complaint was filed in the United States District Court, Northern District of California, in a lawsuit captioned Physicians Executive Business Corp. v. XOMA Ltd., et al., No. C 04 4878, by an investor in our common shares. The complaint asserts claims for alleged fraud and negligent misrepresentation relating to events preceding the announcement of Phase II trial results for XMP.629 in August of 2004. The complaint seeks unspecified compensatory damages. We filed a motion to dismiss the complaint and that motion was granted with leave to amend on April 27, 2005. Plaintiff filed an amended complaint on May 20, 2005. We subsequently entered into an agreement to settle the litigation dated July 27, 2005, and the lawsuit was dismissed with prejudice on August 5, 2005. We believe that the resolution of this lawsuit will not have a material impact upon our future consolidated financial position or results of operations.

In April of 2005, a complaint was filed in the Circuit Court of Cook County, Illinois, in a lawsuit captioned Hanna v. Genentech, Inc. and XOMA (US) LLC, No. 2005004386, by an alleged participant in one of the clinical trials of RAPTIVA®. The lawsuit was thereafter removed to the United States District Court, Northern District of Illinois, No. 05C 3251. The complaint asserts claims for alleged strict product liability and negligence against Genentech and us based on injuries alleged to have occurred as a result of plaintiff's treatment in the clinical trials. The complaint seeks unspecified compensatory damages alleged to be in excess of $100,000. Although we have not yet fully assessed the merits of this lawsuit, we intend to vigorously investigate and pursue available defenses. We do not believe that this matter, or the resolution of this matter, will have a material impact upon the our future consolidated financial position or results of operations

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

On May 19, 2005, the Company held its annual general meeting of shareholders. The following persons (the only nominees) were elected as the Company's directors, having received the indicated votes:

Name	Votes For	Votes Withheld
James G. Andress	70,033,056	1,715,436
William K. Bowes, Jr.	69,788,279	1,960,213
John L. Castello	69,789,965	1,958,527
Peter B. Hutt	70,039,310	1,709,182
Arthur Kornberg, M.D.	70,045,585	1,702,907
Patrick J. Scannon, M.D., Ph.D.	70,074,761	1,673,731
W. Denman Van Ness	70,073,907	1,674,585
Patrick J. Zenner	65,223,676	6,524,816

The proposal to appoint Ernst & Young LLP to act as the Company's independent auditors for the 2005 fiscal year and authorize the Board to agree to such auditors' fee was approved, having received 70,109,810 votes for, 1,272,360 votes against, 366,322 abstentions and zero broker non-votes.

The proposal to increase the Company's authorized share capital by the creation of an additional 75,000,000 Common Shares was approved, having received 63,888,692 votes for, 7,532,619 votes against, 327,181 abstentions and zero broker non-votes.

ITEM 5. OTHER INFORMATION

None.

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ITEM 6. EXHIBITS

(a) Exhibits:

10.1	Employment Agreement, effective as of July 1, 2005, between XOMA (US) LLC and J. David Boyle II.
10.2	Research. Development and Commercialization Agreement, dated as of May 26, 2005, by and between Chiron Corporation and XOMA (US) LLC (with certain confidential information omitted, which omitted information is the subject of a confidential treatment request and has been filed separately with the Securities and Exchange Commission).
10.3	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).
10.4	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).
31.1	Certification of John L. Castello, Principal Executive Officer, filed pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Certification of J. David Boyle II, Principal Financial Officer, filed pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of John L. Castello, Chief Executive Officer, furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of J. David Boyle II, Chief Financial Officer, furnished pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
99.1	Press Release dated August 8, 2005, furnished herewith.

XOMA Ltd.

SIGNATURES

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

XOMA Ltd.

Date: August 8, 2005

By: /s/ JOHN L. CASTELLO
John L. Castello
Chairman of the Board, President and
Chief Executive Officer

Date: August 8, 2005

By: /s/ J. DAVID BOYLE II
J. David Boyle II
Vice President, Finance and
Chief Financial Officer

Exhibit 10.1

EMPLOYMENT AGREEMENT

This Employment Agreement ("Agreement"), effective as of this 1st day of July, 2005, 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 J. David Boyle II ("Executive"), an individual residing at 5329 Broadway, Oakland, California 94618-1427.

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

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

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

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

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

3. Term and Duties.

(a) Term of Employment. This Agreement shall become effective and the term of employment pursuant to this Agreement shall commence on July 1, 2005 and will continue until June 30, 2006, and will be automatically extended (without further action by the parties) for one year thereafter and again on each subsequent anniversary thereof unless terminated by mutual written consent of Executive and the Company more than 90 days prior to the next scheduled expiration date or unless Executive's employment is terminated by the Company or he resigns from the Company's employ as described herein.

(b) Duties. During the period of his employment hereunder Executive shall serve the Company as its Vice President, Finance and Chief Financial Officer, and except for illnesses, vacation periods and reasonable leaves of absence, Executive shall devote all of his business time, attention, skill and efforts to the faithful performance of his duties hereunder. So long as Executive is Vice President, Finance and Chief Financial Officer of the Company, he will discharge all duties incidental to such office and such further duties as may be reasonably assigned to him from time to time by the Chairman.

4. Compensation and Reimbursement of Expenses.

(a) Compensation. For all services rendered by Executive as Vice President, Finance and Chief Financial Officer during his employment under this Agreement, the Company shall pay Executive as compensation a base salary at a rate of not less than $240,000 per annum. All taxes and governmentally required withholding shall be deducted in conformity with applicable laws.

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

5. Participation in Benefit Plans. The payments provided in Section 4 hereof are in addition to benefits Executive 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 and termination pay 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 Executive shall be eligible to receive during the period of his employment under this Agreement, and during any subsequent period(s) for which he shall be entitled to receive payment from the Company under paragraph 6(b) below, all benefits and emoluments for which key executives are eligible under every such plan or program to the extent permissible under the general terms and provisions of such plans or programs and in accordance with the provisions thereof.

6. Payments to Executive Upon Termination of Employment.

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

(i) The termination by the Company of Executive's employment hereunder for any reason other than pursuant to paragraph 6(c); or

(ii) Executive's resignation from the Company's employ for Good Reason, upon not less than thirty (30) days' prior written notice. "Good Reason" means, without the Executive's written consent, (A) the material diminution of any material duties or responsibilities of the Executive without the same being corrected within ten (10) days after being given written notice thereof; (B) a material reduction in the Executive's base salary; or (C) the Company giving written notice of its intention not to extend the term of this Agreement as provided in paragraph 3(a).

(b) Continuation of Salary and Other Benefits. Upon the occurrence of an event of termination under paragraph 6(a), the Company (i) shall, subject to the provisions of Section 7 below, pay Executive, or in the event of his subsequent death, his beneficiary or beneficiaries of his estate, as the case may be, as severance pay or liquidated damages, or both, semi-monthly for a period of six (6) months following the event of termination (the "Severance Payment Period"), a sum equal to his current salary in effect at the time of the event of termination, but in no case at a rate less than $240,000 per annum, (ii) shall continue to provide the other benefits referred to in Section 5 hereof until the end of the Severance Payment Period or until Executive becomes employed elsewhere, whichever is earlier, and (iii) shall continue to provide the benefits provided for in paragraph 4(b) to the extent of expenses incurred but not reimbursed prior to the event of termination. Such payments shall commence on the last day of the next regular pay period following the date of the event of termination, or, at the election of the Company, may be paid in one lump sum or in such other installments as may be mutually agreed between the Company and Executive or, in the event of his subsequent death, his beneficiary or beneficiaries or legal representative, as the case may be.

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

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

(ii) Executive shall act or refrain from acting in respect of any of the duties and responsibilities which have been assigned to him in accordance with this Agreement and shall fail to desist from such action or inaction within ten (10) days (or such longer period of time, not exceeding ninety (90) days, as Executive shall in good faith and the exercise of reasonable efforts require to desist from such action or inaction) after Executive's receipt of notice from the Company of such action or inaction and the Board of Directors determines that such action or inaction constituted gross negligence or a willful act of malfeasance or misfeasance of Executive in respect of such duties; or

(iii) Executive shall breach any material term of this Agreement and shall fail to correct such breach within ten (10) days (or such longer period of time, not exceeding ninety (90) days, as Executive shall in good faith and the exercise of reasonable efforts require to cure such breach) after Executive's receipt of notice from the Company of such breach;

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

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

(a) Confidential Information and Competitive Conduct. Executive shall not, to the detriment of the Company, disclose or reveal to any unauthorized person any trade secret or other confidential information relating to the Company or its affiliates or to any businesses operated by them, and Executive confirms that such information constitutes the exclusive property of the Company. Executive 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 shall not, directly or indirectly, engage in, enter the employ of or render any service to any person, firm or business in direct competition with any part of the business being conducted by the Company; provided, however, that Executive's ownership less than five percent (5%) of the outstanding stock of a corporation shall not be itself be deemed to constitute such competition. Executive recognizes that the possible restrictions on his activities which may occur as a result of his performance of his obligations under this paragraph 7(a) are required for the reasonable protection of the Company and its investments. For purposes hereof, "direct competition" means the pursuit of one or more of the same therapeutic or diagnostic indications utilizing a substantially similar scientific basis.

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

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

8. Effect of Prior Agreements. This Agreement contains the entire understanding between the parties hereto and supersedes any prior employment agreements between the Company and Executive.

9. General Provisions.

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

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

10. Successors and Assigns.

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

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

11. Modification and Waiver.

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

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

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

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

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

XOMA (US) LLC

By: /s/ JOHN L. CASTELLO
John L. Castello
Chairman of the Board, President and Chief Executive Officer

/s/ J. DAVID BOYLE II
J. David Boyle II

Exhibit 10.2

[*] indicates that a confidential portion of the text of this agreement has been omitted. The non-public information has been filed separately with the Securities and Exchange Commission.

Execution Version

RESEARCH, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

dated as of

May 26, 2005

by and between

CHIRON CORPORATION

and

XOMA (US) LLC

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RESEARCH, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This Research, Development and Commercialization Agreement (this "**Agreement**") is dated as of the 26th day of May, 2005 (the "**Date of this Agreement**"), by and between Chiron Corporation, a Delaware corporation having its principal place of business at 4650 Horton Street, Emeryville, California 94608 ("**Chiron**"), and XOMA (US) LLC, a Delaware limited liability company with offices located at 2910 Seventh Street, Berkeley, California 94710 ("**XOMA**"). Chiron and XOMA may each be referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**". When used in this Agreement, capitalized terms shall have the meanings set forth in Article I.

RECITALS

A. Chiron has developed a large-scale genomics platform focused on generating novel, functionally validated targets for development of small molecule drugs, therapeutic antibodies and vaccines.

B. XOMA has substantial experience and broad-based capabilities in monoclonal antibody generation and development, including access to multiple phage display libraries.

C. The Parties have established a collaborative relationship to research, develop and commercialize antibody products in the field of oncology pursuant to that certain agreement executed on February 27, 2004 (the "**Effective Date**") by and between the Parties (the "**Initial Agreement**").

D. The Parties wish to enter into this Agreement to replace the Initial Agreement to set forth in further detail the terms of the collaborative relationship between the Parties (the "**Collaboration**"), without changing the Effective Date for exclusivity and for various other purposes as set forth in this Agreement.

IN CONSIDERATION of the mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Chiron and XOMA hereby agree as follows:

ARTICLE I

DEFINITIONS

As used in this Agreement, the following capitalized terms shall have the following meanings:

1.1 "**Affiliate**" Affiliate shall mean any entity that is controlled by, controls or is under common control with Chiron or XOMA, as applicable. For such purpose the term "**control**" shall mean (a) direct or indirect ownership of more than fifty percent (50%) of the voting interest in the entity in question, or more than fifty percent (50%) interest in the income of the entity in question; or (b) possession, directly or indirectly, of the power to direct or cause the

direction of management or policies of the entity in question (whether through ownership of securities or other ownership interests, by contract or otherwise). Notwithstanding the foregoing, "Affiliate" shall not include, in the case of Chiron, Novartis A.G. or any Affiliate of Novartis A.G. (other than Chiron and any of its subsidiaries), so long as Novartis A.G. is precluded from electing, or has not exercised its rights to elect, a majority of the Board of Directors of Chiron, in accordance with the terms of the Governance Agreement dated as of November 20, 1994, among Ciba-Geigy Limited, Ciba-Geigy Corporation and Chiron.

1.2 "**Annual Budget Deviation Threshold**" Annual Budget Deviation Threshold shall have the meaning set forth in Section 3.5(d).

1.3 "**Antibody**" Antibody shall mean any immunoglobulin molecule whether in monospecific or any other form and shall include, without limitation, immunoglobulin fragments, such as Fv, Fab, F(ab') and single-chain antibodies.

1.4 "**Antibody Display, Panning, Screening and Characterization Technology**" Antibody Display, Panning, Screening and Characterization Technology shall mean those technologies, and their associated methods of use, that are necessary and/or useful for the creation of libraries of Antibodies, the isolation, characterization and/or reformatting of such Antibodies and/or the display, panning and/or screening of such libraries or individual Antibodies, including, without limitation, such libraries themselves and any technology associated with library construction, phage display and/or phage screening.

1.5 "**Antibody Optimization Technology**" Antibody Optimization Technology shall mean those technologies, and their associated methods of use, necessary and/or useful for the alteration, optimization and/or improvement of any characteristic or attribute of an Antibody.

1.6 "**Antibody Product**" Antibody Product shall mean any composition of matter or article of manufacture consisting essentially of an Antibody alone or integrally associated with a composition of matter or article of manufacture (including without limitation conjugates bound to a toxin, label or other moiety) providing therapeutic, half-life, safety or other advantages to the Antibody. For the avoidance of doubt, Antibody Product does not include gene therapy products, Fc fusion proteins lacking antibody variable domains or viral conjugates.

1.7 "**Antibody Work by XOMA**" Antibody Work by XOMA shall have the meaning set forth in Section 3.2(e)(ii).

1.8 "**Appraiser**" Appraiser shall have the meaning set forth in Section 14.2(c)(ii)(A).

1.9 "**Arbitration Notice**" Arbitration Notice shall have the meaning set forth in **Schedule 5.1(d)(i)**.

1.10 "**Bacterial Cell Expression Technology**" Bacterial Cell Expression Technology shall mean the bacterial cell expression technology Controlled by XOMA Ireland Limited and subsequently licensed to XOMA (with the right to sublicense hereunder) and shall not include any improvements thereto which constitute Collaboration Inventions.

1.11 "**BLA**" BLA shall mean a biologics license application with the FDA as more fully described at 21 CFR § 601.2, or successor equivalent.

1.12 "**Bona Fide Collaboration**" Bona Fide Collaboration shall mean a bona fide development and/or commercialization collaboration between a Party and at least one Third Party in which such Party agrees to bear, and bears, significant scientific or economic risk.

1.13 "**Call**" Call shall mean a visit by a member of a sales force in the Field.

1.14 "**Cancer**" Cancer shall mean a condition or disease primarily characterized by uncontrolled growth or spread of abnormal and anaplastic cells, metastases, neoplasm, malignant tumors and/or invasion by abnormal and anaplastic cells into tissues regardless of cause. For the avoidance of doubt, Cancer shall not include inflammation, infection or conditions characterized solely by hypertrophy or hyperplasticity of normal cells.

1.15 "**Chiron Background IP**" Chiron Background IP shall mean any and all Know-How and Patent Rights (including, for example, intellectual property relating to Collaboration Targets) Controlled by Chiron as of the Effective Date (or, in the case of intellectual property relating to Collaboration Targets accepted for inclusion in the Collaboration pursuant to Section 3.3(d) after the Effective Date, as of the date on which each such Collaboration Target is so accepted) that are [*] for (i) research relating to Collaboration Target(s) or (ii) research, development, manufacture or Commercialization of Collaboration Product(s). Chiron Background IP shall also include any and all Know-How and Patent Rights that are necessary for either of the purposes set forth in clauses (i) and (ii) of the immediately preceding sentence and that come to be Controlled by Chiron during the term of this Agreement but not in the course of the Collaboration, except (x) to the extent the inclusion of such Know-How and Patent Rights in Chiron Background IP would constitute a breach or violation of or a default under, or would otherwise be inconsistent with, the terms and provisions of any license or other agreement giving rise to or governing such Know-How or Patent Rights, and (y) that, in the event the inclusion of such Know-How or Patent Rights in Chiron Background IP would subject either or both of the Parties to additional financial or other adverse obligations to a Third Party, such Know-How or Patent Rights shall not be so included in Chiron Background IP unless the Parties so agree (which agreement shall not be unreasonably withheld). For the avoidance of doubt, the Parties acknowledge that, to the extent any Chiron Background IP is covered by a license or other agreement with a Third Party, such Chiron Background IP shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement. Chiron Background IP shall include, without limitation, those licenses, patents and patent applications set forth on **Schedule 1.15**.

1.16 "**Chiron Commercial Chair**" Chiron Commercial Chair shall have the meaning set forth in Section 4.3(e).

1.17 "**Chiron Opt-Out IP**" Chiron Opt-Out IP shall mean any and all Chiron Background IP and Collaboration IP Controlled by Chiron, each as (i) existing as of the date of the applicable opt-out and (ii) necessary or reasonably useful for research, development, manufacture and Commercialization of the applicable Opt-Out Target(s) and Opt-Out Product(s) corresponding to the particular Opt-Out Target(s); *provided* that, with respect to Chiron Background

IP that falls within the definition thereof by virtue of the second sentence of such definition, only such Chiron Background IP as is necessary for research, development, manufacture and Commercialization of the applicable Opt-Out Target(s) and Opt-Out Product(s) corresponding to the particular Opt-Out Target(s) shall be included in Chiron Opt-Out IP.

1.18 "**Collaboration**" Collaboration shall have the meaning set forth in the Recitals.

1.19 "**Collaboration Cost of Goods Sold**" Collaboration Cost of Goods Sold shall mean the cost calculated using the Fully Burdened Manufacturing Cost and according to customary practices, including weighted average costing or the use of pre-determined standards. The Parties agree to decide in good faith upon the specific procedure for making such calculation at an appropriate time after the Date of this Agreement and prior to the first commercial sale of the first Collaboration Product to be so sold.

1.20 "**Collaboration Gross Margin**" Collaboration Gross Margin shall mean Net Sales of Collaboration Products minus Collaboration Cost of Goods Sold.

1.21 "**Collaboration Inventions**" Collaboration Inventions shall mean any and all Inventions Controlled by a Party and made, conceived, reduced to practice or otherwise acquired or licensed, either alone or jointly with another, during the term of this Agreement and arising out of the activities of the Parties under the Collaboration and pursuant to R&D Plans and Budgets. For the avoidance of doubt, (i) any and all such Inventions which constitute an improvement to either Chiron Background IP or XOMA Background IP or an improvement to the Expression and Engineering Technologies made, conceived, reduced to practice or otherwise acquired or licensed during the term of this Agreement and in the course of the Collaboration shall be deemed to be Collaboration Inventions and (ii) Expression and Engineering Technologies as such technologies existed prior to the Effective Date shall not be Collaboration Inventions. Notwithstanding the foregoing, the Parties acknowledge that, to the extent any Collaboration Invention is covered by a license or other agreement with a Third Party, such Collaboration Invention shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

1.22 "**Collaboration IP**" Collaboration IP shall mean any and all Collaboration Know-How and any and all Collaboration Patent Rights.

1.23 "**Collaboration Know-How**" Collaboration Know-How shall mean any and all Know-How Controlled by a Party and made, conceived, reduced to practice or otherwise acquired or licensed, either alone or jointly with others, during the term of this Agreement and arising out of the activities of the Parties under the Collaboration and pursuant to R&D Plans and Budgets that is necessary or useful in the research, development, manufacture or Commercialization of a Collaboration Product. For the avoidance of doubt, (i) any and all such Know-How which constitutes an improvement to either Chiron Background IP or XOMA Background IP or an improvement to the Expression and Engineering Technologies made, conceived, reduced to practice or otherwise acquired or licensed during the term of this Agreement and in the course of the Collaboration shall be deemed to be Collaboration Know-How and (ii) Expression and Engineering Technologies as such technologies existed prior to the Effective Date shall not be

Collaboration Know-How. Notwithstanding the foregoing, the Parties acknowledge that, to the extent any Collaboration Know-How is covered by a license or other agreement with a Third Party, such Collaboration Know-How shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

1.24 "**Collaboration Patent Rights**" Collaboration Patent Rights shall mean Patent Rights claiming or covering Collaboration Inventions.

1.25 "**Collaboration Product**" Collaboration Product shall mean any Antibody Product that binds to a Collaboration Target and is generated or otherwise created, or acquired from a Third Party, by either Party pursuant to the Collaboration. Collaboration Products shall not include any Opt-Out Products.

1.26 "**Collaboration Target**" Collaboration Target shall mean: (a) the four Targets in the Collaboration as of the Date of this Agreement as set forth on **Schedule 3.3(b)**; and (b) any Validated Target later accepted into the Collaboration pursuant to Section 3.3(d). Collaboration Targets shall not include any Opt-Out Targets.

1.27 "**Commercialization**" Commercialization shall mean any and all activities constituting marketing, promoting, detailing, offering for sale, selling, and supporting Collaboration Products pursuant to the terms of this Agreement including, but not limited to, advertising, education, planning, medical affairs, post-approval clinical trials, Life Cycle Management and regulatory activities, including for example adverse event reporting and recalls.

1.28 "**Commercialization Costs**" Commercialization Costs shall mean the fairly allocable costs of a Party and its Affiliates, on a consolidated basis, of performing such Party's sales and marketing obligations under this Agreement as determined in accordance with GAAP, including depreciation or amortization of capital expenditures related thereto, but excluding general and administrative expenses; *provided* that in no event shall any expense be double-counted or included in Commercialization Costs if such expense has already been accounted for elsewhere, as follows:

(a) External marketing costs — Direct services expenses including reasonable out-of-pocket payments to Third Parties for services for product advertising, promotional expenses, and market research:

(i) Advertising, including agency fees, and development and space charges.

(ii) Collaboration Product promotion and merchandising expenses, including direct mail, grants, honoraria, consultants, symposia, speaker programs, indigent programs, sales aids, reminder items, samples, launch meetings, public affairs programs and post-approval clinical trials.

(iii) Marketing research, including trademark development.

(b) Selling service costs — Direct services expenses including reasonable out-of-pocket payments to Third Parties and all out-of-pocket employee expenses for sales calls and presentations to the customer classes consistent with a plan and budget for Commercialization, as approved in accordance with Section 4.3, including all costs directly incurred by the sales force including:

(i) Salary including bonuses and employee benefit expenses of employees who directly make the sales calls on behalf of a Collaboration Product as well as other expenses related to such persons, allocated based on the percentage of time/effort spent on Collaboration Products such as:

(1) travel, meals and entertainment costs;

(2) small office equipment including computers, telecommunications and other non-capitalizable small equipment costs;

(3) lease costs for regional sales offices and automobiles;

(4) business development expenses for the purpose of establishing new distributors;

(5) sales meeting costs;

(6) insurance on automobiles and sales offices; and

(7) depreciation on fixed assets employed in the direct selling of Collaboration Products.

(ii) Fairly allocable direct and indirect costs of sales personnel involved in supervisory roles on behalf of the Collaboration Products.

(c) Internal marketing costs — Fairly allocable direct and indirect costs of those employees in the following functions who work directly on the Collaboration Products, based on the percentage of time spent on Collaboration Products:

(i) product management;

(ii) market research;

(iii) medical affairs; and

(iv) customer technical service/support.

1.29 "**Commercially Reasonable and Diligent Efforts**" Commercially Reasonable and Diligent Efforts shall mean those efforts and resources normally used by a Party with respect to a Target, Antibody or Antibody Product (or another comparable product if no such Antibody Product exists) owned by it or to which it has rights, which is of similar market potential at a similar stage in its development or product life, taking into account, without

limitation, issues of safety and efficacy, the product profile, the proprietary position of the product and the regulatory environment and status of the Target, Antibody or Antibody Product. Notwithstanding the foregoing, to the extent that the performance of a Party's responsibilities hereunder is adversely affected by the other Party's failure to perform its responsibilities hereunder, such Party shall not be deemed to have failed to use Commercially Reasonable and Diligent Efforts in performing such responsibilities.

1.30 "**Confidential Information**" Confidential Information shall mean all Know-How, Inventions, technical, marketing, financial or other similar information, including without limitation proprietary information and biological and other tangible materials (whether or not patentable). Materials, know-how or other information that is orally, electronically or visually disclosed by a Party, or is disclosed in writing without an appropriate letter, stamp or legend, shall constitute Confidential Information if such information is of the type that should reasonably have been considered confidential by the receiving Party at the time of disclosure, given the circumstances surrounding the disclosure of such materials, know-how or other information.

1.31 "**Continuing Party**" Continuing Party shall have the meaning set forth in Section 3.9(b).

1.32 "**Control**" or "**Controlled**" Control or Controlled shall mean, with respect to any Know-How or Patent Rights, possession of the ability (whether arising by ownership or license) to grant rights, ownership, access, a license or a sublicense (as applicable) to such intellectual property as provided for herein without violating the terms of any written agreement with a Third Party entered into prior to the time such Party would be first required hereunder to grant the other Party such access, license or sublicense.

1.33 "**Core Technology Improvement**" Core Technology Improvement shall have the meaning set forth in Section 12.1(a)(iii).

1.34 "**Date of this Agreement**" Date of this Agreement shall have the meaning set forth in the introductory paragraph of this Agreement.

1.35 "**Detail**" and "**Detailing**" Detail shall mean a Call during which a product presentation of a Collaboration Product is made in a face-to-face meeting in an individual or group practice setting between a professional sales representative and a physician (or other such customer who may need to have an understanding of a Collaboration Product) in which one or more key product messages are verbally presented in a balanced manner. For avoidance of doubt, Detail does not include a reminder or sample drop. For further avoidance of doubt, Detail does not include any other sales and marketing activities. Detailing shall mean the act of presenting a Detail.

1.36 "**Dismissed Target**" Dismissed Target shall have the meaning set forth in Section 3.4(a).

1.37 "**Drug Safety Agreement**" Drug Safety Agreement shall have the meaning set forth in Section 10.4.

1.38 "Effective Date" Effective Date shall have the meaning set forth in the Recitals.

1.39 "**Exclusivity Period**" Exclusivity Period shall mean the period described in Section 3.2(b).

1.40 "**Exploit**" and "**Exploitation**" Exploit shall mean to sell or otherwise transfer for value, or grant a license under, a particular asset to a Third Party, but shall not include the use of such asset by either Party on its own behalf or in the context of a Bona Fide Collaboration. Exploitation shall mean the act of Exploiting.

1.41 "**Expression and Engineering Technologies**" Expression and Engineering Technologies shall mean (a) the Bacterial Cell Expression Technology and (b) the Human Engineering™ Technology.

1.42 "**FDA**" FDA shall mean the United States Food and Drug Administration and any successor agency.

1.43 "**Field**" Field shall have the meaning set forth in Section 2.1.

1.44 "**Financial Hardship**" Financial Hardship shall have the meaning set forth in Section 3.9(a).

1.45 "**FMV**" FMV shall have the meaning set forth in Section 14.2(c).

1.46 "**FTE**" FTE shall mean the amount of time an individual actually devotes to working on Collaboration activities chargeable by either Party under this Agreement, expressed on a monthly percent effort basis, using average monthly working hours ([*]) as the denominator. The numerator (actual hours worked) shall be adjusted on a pro-rata basis such that exempt employees are in no case allocating more than 100% of their time to Collaboration, non-Collaboration, administrative and paid-time-off activities. The numerator shall exclude paid-time-off and administrative and other non-allocable activities unless specifically agreed by the Parties in determining the applicable FTE Rate on a function-by-function basis per Section 1.48.

1.47 "**FTE Costs**" FTE Costs shall mean FTE Rates multiplied by FTEs.

1.48 "**FTE Rates**" FTE Rates shall mean the agreed upon cost per FTE by functional area and are intended to embody costs (i) directly attributed to such Party's supervisory functions, service functions, occupancy costs, and its payroll, information systems, or purchasing functions, all of which are in direct support of the development, manufacture, use and sale of an applicable Collaboration Product, and (ii) allocated to departments based on space occupied or headcount or other activity-based methods; but shall not include any costs attributable to general corporate activities including, by way of example only, executive management, investor relations, human relations, business development, legal affairs, finance and employee costs associated with stock option plans and other equity incentive plans as permitted by applicable accounting rules. FTE Rates shall be adjusted annually (beginning in January 2005) for inflation using the latest available United States Producer Price Index for Pharmaceutical Preparations, unadjusted (WPU0638), as a simple percentage. In addition, the Joint Steering Committee shall

discuss and approve, as needed, further adjustments to common FTE Rates every [*] years on a prospective basis beginning January 2007. The FTE Rates for 2004 (on a per annum basis) are:

Functional Area	Annual FTE Rate
Research	$ [*]
Pre-Clinical	$ [*]
Clinical & Regulatory	$ [*]
Technical Development	$ [*]
Project Management	$ [*]
Quality Assurance	$ [*]
Quality Control	$ [*]

Establishment of annual FTE Rates for functional areas not set forth in the table above shall be the responsibility of the JRDC or, as applicable, the Joint Commercialization Team subject to a $[*] per annum minimum. Such rates will be used to determine the R&D Plan and Budget for the applicable annual period and all future periods.

1.49 "**Fully Burdened Manufacturing Costs**" Fully Burdened Manufacturing Costs shall mean, with respect to a Collaboration Product (in bulk, vialed or finished form, as the case may be) for successful and failed lots, the sum of the following, all of which shall be calculated in accordance with GAAP; *provided* that in no event shall any expense be double-counted or included in Fully Burdened Manufacturing Costs if such expense has already been accounted for elsewhere:

(a) The amounts paid by a Party to a Third Party for (i) providing raw materials and packaging materials for producing such Collaboration Product, (ii) manufacturing, filling and/or finishing such Collaboration Product or any component thereof, (iii) distributing, transporting, storing and insuring such Collaboration Product, and (iv) testing such Collaboration Product, including with respect to the foregoing, all sales and excise taxes and customs duty charges imposed by governmental authorities with respect thereto to the extent paid by the Party and not reimbursed or refunded by a Third Party;

(b) Direct expenses, which include those material, labor and service expenses captured in time sheets, invoices and the like, that are specifically for such Collaboration Product. Direct material expenses include cost of raw materials, filters, manufacturing supplies, solvent, containers, container components, packaging, labels and other printed materials used in production. Direct labor expenses include salaries and fringe benefits for personnel directly involved in manufacturing such Collaboration Product in accordance with GMP requirements, such as production, quality control, quality assurance, microbiology, and other similar departments as needed who participate directly in the production of such Collaboration Product. Direct services expenses include reasonable out-of-pocket payments to Third Parties for services;

(c) Indirect expenses, which include production overhead costs such as a reasonable allocation of expenses associated with personnel supporting the direct manufacturing of such Collaboration Product in accordance with GMP requirements. Indirect

expenses can include labor and overhead for quality control, quality assurance, raw material acquisition and acceptance, microbiology, document control, calibration/validation, and non-research and development expenses for process development and analytical methods development supporting manufacturing, but excluding interest expenses and capital expenditures for facilities and equipment used to manufacture Collaboration Products; and

(d) Overhead costs, which are reasonably allocated direct and indirect manufacturing costs with respect to such Collaboration Product that cannot be identified in a practical manner with specific units of production and, therefore, cannot be included as direct material or direct labor expenses. Such overhead costs include:

(i) Specific manufacturing overhead allocations, including but not limited to, facilities support costs, utilities (including electricity, water, sewer, waste disposal), indirect materials and supplies, consumables (including maintenance and repair materials, tools, spare parts), plant management, engineering and development support, maintenance and repair of the production plant and production equipment, property taxes (excluding income taxes), materials management, inventory storage, information management services and insurance;

(ii) Depreciation and lease costs over the expected life of buildings and equipment specifically attributable to such Collaboration Product; and

(iii) Reasonable costs related to unused manufacturing capacity reserved for such Collaboration Product as agreed to by the Parties in advance, if any.

1.50 "**GAAP**" GAAP shall mean United States generally accepted accounting principles, consistently applied, as in effect from time to time.

1.51 "**GMP**" GMP shall mean Good Manufacturing Practices regulations and implementing guidelines and General Biological Products Standards promulgated by the FDA and published at 21 CFR §§ 210, 211 and 610, as such regulations may be amended from time to time, and by the European Commission as set out in Directive 91/356 EEC of the Commission of the European Communities as may be amended from time to time and all relevant foreign equivalents.

1.52 "**Go/No Go Decision Point**" Go/No Go Decision Point shall have the meaning set forth in Section 3.5(a).

1.53 "**Human Engineering™ Technology**" Human Engineering™ Technology shall mean the Human Engineering™ technology Controlled by XOMA Technology Ltd. and subsequently licensed to XOMA (with the right to sublicense hereunder) and shall not include any improvements thereto which constitute Collaboration Inventions.

1.54 "**Identifying Party**" Identifying Party shall have the meaning set forth in Section 3.3(d).

1.55 "**IND**" IND shall mean an investigational new drug application with the FDA as more fully described at 21 CFR § 312.20, or successor equivalent, or a comparable filing with a Regulatory Authority outside the United States.

1.56 "**IND-Enabling Studies**" IND-Enabling Studies shall mean GLP toxicology and safety studies designed and conducted to support submission of an IND.

1.57 "**Initial Agreement**" Initial Agreement shall have the meaning set forth in the Recitals.

1.58 "**Interest Period**" Interest Period shall have the meaning set forth in Section 7.4.

1.59 "**Interest Rate**" Interest Rate shall have the meaning set forth in Section 7.4.

1.60 "**Inventions**" Inventions shall mean any and all inventions, discoveries or ideas, and improvements thereto (whether or not patentable).

1.61 "**Joint Commercialization Team**" Joint Commercialization Team shall mean the team established pursuant to Section 4.3(a).

1.62 "**Joint Patent Committee**" Joint Patent Committee shall mean the committee established pursuant to Section 5.3.

1.63 "**Joint Research and Development Committee**" and **"JRDC"** Joint Research and Development Committee and JRDC shall mean the committee established pursuant to Section 5.2(a).

1.64 "**Joint Steering Committee**" Joint Steering Committee shall mean the committee established pursuant to Section 5.1(a).

1.65 "**Know-How**" Know-How shall mean any and all know-how, trade secrets, data, processes, techniques, procedures, compositions, materials, devices, methods, formulas, protocols, pre-clinical and clinical data and information, including any and all chemical, biochemical, toxicological, and scientific research information, whether in written, electronic, graphic or video form or any other form or format.

1.66 "**Life Cycle Management**" Life Cycle Management shall mean efforts, whether prior to or after obtaining Regulatory Approval of a Collaboration Product, to maximize long term commercial sales and commercial potential of such Collaboration Product.

1.67 "**Losses**" Losses shall have the meaning set forth in Section 13.5.

1.68 "**Material Budget Deviation**" A Material Budget Deviation shall mean an incurred deviation of [*] percent ([*]%) or more above any R&D Plan and Budget.

1.69 "Maximum Profit Share Differential" Maximum Profit Share Differential shall have the meaning set forth in Section 6.3.

1.70 "**Net Sales**" Net Sales shall mean the gross amounts invoiced by Chiron or, in the case of Section 3.9(e)(ii) and Section 6.2(b), XOMA (and their respective Affiliates), as the case may be, for sales of products to Third Parties less the following unreimbursed or non-refunded deductions with respect thereto, determined in accordance with GAAP and calculated in United States dollars and to the extent such amounts have not already been deducted from the amount invoiced: (a) amounts actually allowed as volume or quantity discounts, rebates, price reductions, returns (including recalls) and charge-backs, (b) sales, excise and turnover taxes imposed directly upon and actually paid by such Party and its Affiliates, (c) uncollectible accounts, to the extent such reserve is determined in accordance with GAAP, consistently applied across all product lines of such Party and its Affiliates, as applicable, until such amounts are collected, and (d) all other direct expenses or discounts, including but not limited to cash discounts, custom duties and transportation and insurance charges. In the event that products are sold in the form of combination products containing one or more active ingredients, other than Collaboration Products or Opt-Out Products, as the case may be, Net Sales for such combination products will be calculated by determining the portion of received revenue attributable to the sale of the Collaboration Products or Opt-Out Products, as the case may be, in the combination product.

1.71 "**Non-Identifying Party**" Non-Identifying Party shall have the meaning set forth in Section 3.3(d).

1.72 "**Opt-Out Product**" Opt-Out Product shall have the meaning set forth in Section 3.9(a).

1.73 "**Opt-Out Target**" Opt-Out Target shall have the meaning set forth in Section 3.9(a).

1.74 "**Opting-Out Party**" Opting-Out Party shall have the meaning set forth in Section 3.9(a).

1.75 "**Parties**" and "**Party**" Parties and Party shall have the respective meanings set forth in the introductory paragraph to this Agreement.

1.76 "**Patent Rights**" Patent Rights shall mean (a) unexpired letters patent (including inventor's certificates) which have not been held invalid or unenforceable by a court of competent jurisdiction from which no appeal can be taken or has been taken within the required time period (and which have not been admitted to be invalid or unenforceable through reissue, disclaimer or otherwise, or been abandoned), including without limitation any substitution, extension, registration, confirmation, reissue, re-examination, supplementary protection certificates, confirmation patents, patent of additions, renewal or any like filing thereof and (b) pending applications for letters patent which have not been canceled, withdrawn from consideration, finally determined to be unallowable by the applicable governmental authority for whatever reason (and from which no appeal is or can be taken), and/or abandoned, including without limitation any continuation, division or continuation-in-part thereof and any provisional applications.

1.77 "Phase I Clinical Trial" Phase I Clinical Trial shall mean that portion of the process seeking Regulatory Approval which provides for human trials for the purpose of determining toxicity, metabolism, absorption, elimination and other pharmacological action, as more fully described at 21 CFR § 312.21(a).

1.78 "**Phase II Clinical Trial**" Phase II Clinical Trial shall mean that portion of the process seeking Regulatory Approval which provides for human trials for the purposes of determining dose and evaluating safety and efficacy in the proposed therapeutic indication, as more fully described at 21 CFR § 312.21(b).

1.79 "**Phase III Clinical Trial**" Phase III Clinical Trial shall mean that portion of the process seeking Regulatory Approval which provides for human trials on sufficient numbers of patients intended for the purposes of (a) establishing safety and efficacy for an intended use; and (b) defining warnings, precautions and adverse reactions in the dosage to be prescribed, as more fully described at 21 CFR § 312.21(c).

1.80 "**Potential Targets**" Potential Targets shall have the meaning set forth in Section 3.3(c).

1.81 "**Pre-Tax Profit**" Pre-Tax Profit shall mean the amount, whether positive or negative, equal to Collaboration Gross Margin minus (i) Research and Development Costs of the Collaboration and (ii) Commercialization Costs of the Collaboration.

1.82 "**Project Team**" Project Team shall have the meaning set forth in Section 3.6(a).

1.83 "**Protein Expression Technology**" Protein Expression Technology shall mean modular transient mammalian vectors, modular permanent mammalian vectors, and their associated genetic control elements, methods of use, and technologies necessary and/or useful for the expression or production of Antibodies in a cell or host organism.

1.84 "**Quality Agreement**" Quality Agreement shall have the meaning set forth in Section 10.5.

1.85 "**R&D Plans and Budgets**" R&D Plans and Budgets shall have the meaning set forth in Section 3.5(a).

1.86 "**Regulatory Approval**" Regulatory Approval shall mean any product and/or establishment licenses, registrations, authorizations or similar approvals of any federal, state or local regulatory agency, department, bureau or other governmental entity, necessary for the manufacture, use, storage, importation, export, transport and sale of a Collaboration Product in a regulatory jurisdiction.

1.87 "**Regulatory Approval Application**" Regulatory Approval Application shall mean an application for Regulatory Approval required to be obtained for the purpose of and before Commercialization of a Collaboration Product in a regulatory jurisdiction, including but not limited to, for the purposes of Regulatory Approval in the United States, a BLA, and all supplements thereto filed pursuant to the requirements of the FDA (including all necessary

documents, data and other information) and, for the purposes of Regulatory Approval in the European Union, an application for Regulatory Approval and all supplements thereto filed pursuant to the requirements of the European Medicines Agency (including all necessary documents, data and other information).

1.88 "**Regulatory Authority**" Regulatory Authority shall mean any national (e.g., the FDA), supranational (e.g., the European Medicines Agency), regional, state or local regulatory agency, department, bureau, commission, council or other governmental entity in any jurisdiction of the world involved in the granting of Regulatory Approvals for pharmaceutical products.

1.89 "**Regulatory Filing**" Regulatory Filing shall mean a BLA or an IND, and any foreign counterparts thereof, and any other filings required by a Regulatory Authority relating to the research and development or the Commercialization of a Collaboration Product.

1.90 "**Related Chiron Patent Rights**" Related Chiron Patent Rights shall have the meaning set forth in Section 12.3(b).

1.91 "**Related XOMA Patent Rights**" Related XOMA Patent Rights shall have the meaning set forth in Section 12.3(c).

1.92 "**Requesting Party**" Requesting Party shall have the meaning set forth in Section 7.1(b).

1.93 "**Research and Development Costs**" Research and Development Costs shall mean:

(a) All out-of-pocket expenses, including specific use capital costs to the extent incurred for Collaboration projects and not applicable for commercial scale uses, incurred by a Party and its Affiliates and the FTE Costs incurred by such Party and its Affiliates, fairly allocable to the performance of its obligations under R&D Plans and Budgets, determined in accordance with GAAP and calculated in United States dollars;

(b) Expenses incurred by either Party and its Affiliates for prosecution, maintenance, enforcement and defense of Patent Rights incurred after the Effective Date and fairly allocable to the Collaboration, including without limitation costs and expenses of outside counsel; and

(c) Fully Burdened Manufacturing Costs incurred with respect to pre-clinical and clinical supplies of Collaboration Products for use in research and development activities in accordance with an R&D Plan and Budget, as applicable, determined in accordance with GAAP and calculated in United States dollars.

Section (a) shall include all out-of-pocket license fee, milestone and similar payments, and royalties actually paid by a Party to a Third Party in consideration for obtaining or maintaining Chiron Background IP, XOMA Background IP and Collaboration IP licensed to either Party under this Agreement, to the extent fairly allocable to the Collaboration, including, for example, Useful Third Party IP.

In no event shall any expense be double-counted or included in Research and Development Costs if such expense has already been accounted for elsewhere in this definition or this Agreement.

1.94 "**Responding Party**" Responding Party shall have the meaning set forth in Section 7.1(b).

1.95 "**Target**" Target shall mean any biological molecule that (a) is believed to be accessible to an Antibody, and (b) is further believed to have application in the Field.

1.96 "**Target Submission**" Target Submission shall have the meaning set forth in Section 3.3(d).

1.97 "**Third Party**" Third Party shall mean any entity other than Chiron or XOMA or their respective Affiliates.

1.98 "**Third Party Technology Agreement**" Third Party Technology Agreement shall have the meaning set forth in Section 3.3(f).

1.99 "**United States**" United States shall mean the United States of America, including its territories and possessions, the District of Columbia and Puerto Rico.

1.100 "**Useful Third Party IP**" Useful Third Party IP shall mean Patent Rights Controlled by a Third Party, which if utilized by the Parties under this Agreement would facilitate the activities contemplated hereunder and/or would be reasonably likely to materially enhance the commercial value of any Collaboration Product.

1.101 "**Valid Claim**" Valid Claim shall mean, with respect to a particular country, a claim of an issued and unexpired Patent Right in such country that (a) has not been revoked or held unenforceable or invalid by a decision of a court or governmental agency of competent jurisdiction from which no appeal can be taken or has been taken within the time allowed for appeal; and (b) has not been abandoned, disclaimed, denied or admitted to be invalid or unenforceable through reissue or disclaimer or otherwise in such country.

1.102 "**Validated Target**" Validated Target shall mean a Target having one or both of the following features: (1) [*]; and/or (2) [*]. The Party submitting a Validated Target having either feature will have made reasonable efforts to [*].

1.103 "**XOMA Background IP**" XOMA Background IP shall mean any and all Know-How and Patent Rights (including, for example, intellectual property relating to Collaboration Targets) Controlled by XOMA as of the Effective Date (or, in the case of intellectual property relating to Collaboration Targets accepted for inclusion in the Collaboration pursuant to Section 3.3(d) after the Effective Date, as of the date on which each such Collaboration Target is so accepted) that are [*] for (i) research relating to Collaboration Target(s) or (ii) research, development, manufacture or Commercialization of Collaboration Product(s). XOMA Background IP shall also include any and all Know-How and Patent Rights that are necessary for either of the purposes set forth in clauses (i) and (ii) of the immediately preceding sentence and that come to be Controlled by XOMA during the term of this Agreement but not in the course of the

Collaboration, except (x) to the extent the inclusion of such Know-How and Patent Rights in XOMA Background IP would constitute a breach or violation of or a default under, or would otherwise be inconsistent with, the terms and provisions of any license or other agreement giving rise to or governing such Know-How or Patent Rights, and (y) that, in the event the inclusion of such Know-How or Patent Rights in XOMA Background IP would subject either or both of the Parties to additional financial or other adverse obligations to a Third Party, such Know-How or Patent Rights shall not be so included in XOMA Background IP unless the Parties so agree (which agreement shall not be unreasonably withheld). For the avoidance of doubt, the Parties acknowledge that, to the extent any XOMA Background IP is covered by a license or other agreement with a Third Party, such XOMA Background IP shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement. XOMA Background IP shall include, without limitation, those licenses, patents and patent applications set forth on **Schedule 1.103**. Notwithstanding any provision of this Agreement to the contrary, XOMA Background IP shall not include the Expression and Engineering Technologies.

1.104 "**XOMA Commercial Lead**" XOMA Commercial Lead shall have the meaning set forth in Section 4.3(e).

1.105 "**XOMA Core Technologies**" XOMA Core Technologies shall mean Antibody Display, Panning, Screening and Characterization Technology, Antibody Optimization Technology, Bacterial Cell Expression Technology, Human Engineering™ Technology and Protein Expression Technology, in each case as Controlled by XOMA as of the Effective Date.

1.106 "**XOMA Opt-Out IP**" XOMA Opt-Out IP shall mean any and all XOMA Background IP and Collaboration IP Controlled by XOMA, each as (i) existing as of the date of the applicable opt-out and (ii) necessary or reasonably useful for research, development, manufacture and Commercialization of the applicable Opt-Out Target(s) and Opt-Out Product(s) corresponding to the particular Opt-Out Target(s); *provided* that, with respect to XOMA Background IP that falls within the definition thereof by virtue of the second sentence of such definition, only such XOMA Background IP as is necessary for research, development, manufacture and Commercialization of the applicable Opt-Out Target(s) and Opt-Out Product(s) corresponding to the particular Opt-Out Target(s) shall be included in XOMA Opt-Out IP.

1.107 "**XOMA Profit Share Differential**" XOMA Profit Share Differential shall mean the aggregate amount by which (a) the share of positive Pre-Tax Profits to which XOMA would otherwise be entitled pursuant to Section 6.2(a) (i.e., thirty percent (30%) thereof) for the period during which Section 6.3 applies is greater than (b) XOMA's share of positive Pre-Tax Profits pursuant to the first sentence of Section 6.3 (i.e., [*] percent ([*]%) thereof).

ARTICLE II

OVERVIEW

2.1 Overview. Subject to the terms and conditions of this Agreement, XOMA and Chiron will collaborate to research, develop and commercialize Antibody Products with respect to Collaboration Targets for the treatment of Cancer in humans worldwide (the "**Field**").

For the avoidance of doubt, palliative treatment and treatment to prevent recurrence or metastasis shall be considered to be treatments of Cancer. For convenience, this Article II sets forth a brief overview of the Collaboration. This overview is subject to the more definitive terms and conditions set forth elsewhere in this Agreement. In the event of a conflict between the provisions of this Article II and any other provision of this Agreement, such other provision shall control.

2.2 General Allocation of Responsibilities. Subject entirely to the more detailed provisions set forth elsewhere in this Agreement, (a) each Party will conduct Target identification work in its sole discretion, (b) both Parties will conduct research and development work relating to Collaboration Targets and Collaboration Products in accordance with R&D Plans and Budgets, (c) XOMA will be responsible for manufacture of pre-clinical supplies and supplies for Phase I and Phase II Clinical Trials of Collaboration Products, and (d) Chiron will be responsible for Commercialization of Collaboration Products.

2.3 General Financial Terms. Subject entirely to the more detailed provisions set forth elsewhere in this Agreement, (a) each Party will bear all costs and expenses incurred by it in connection with its Target identification work, (b) the Parties will share Research and Development Costs incurred in connection with Collaboration research and development activities 70% (Chiron) and 30% (XOMA), and (c) the Parties will share Pre-Tax Profits from the Collaboration 70% (Chiron) and 30% (XOMA).

2.4 Transparency. The Parties intend that each of them be fully and promptly informed as to all material information and developments relating to the activities of the Parties under this Agreement, including, without limitation, all material information and developments relating to the research and development, manufacture and commercialization of Collaboration Products. As more fully set forth elsewhere in this Agreement, with respect to research and development and manufacturing of preclinical and clinical supplies, the primary mechanism for communicating such information in a timely manner will be the day-to-day interaction of the Project Teams. In addition, all material information and developments will be presented and discussed in the appropriate level of detail at the periodic meetings of the Joint Steering Committee, the JRDC and the Joint Commercialization Team.

2.5 Independence. Subject to the terms of this Agreement, including without limitation Section 2.4 (Transparency), Collaboration activities will be performed by or on behalf of XOMA and Chiron, each acting in its own capacity and independently pursuant to plans and budgets as set forth herein, rather than through a joint venture, partnership or similar jointly owned enterprise.

ARTICLE III

RESEARCH AND DEVELOPMENT

3.1 In General. As set forth in greater detail below, both Parties will use Commercially Reasonable and Diligent Efforts to conduct research and development activities relating to Collaboration Targets and Collaboration Products in accordance with R&D Plans and Budgets. Such plans will assign responsibility for specific research and development activities to

each Party; *provided* that in general XOMA will be responsible for generating Antibodies against each Collaboration Target and for optimizing such Antibodies.

3.2 Exclusivity.

(a) During the Exclusivity Period, neither Party will, directly or indirectly, conduct any research and development with respect to Antibody Products in the Field, except as expressly set forth in this Agreement. An Antibody Product, other than an Antibody Product that binds to a Collaboration Target, that has a use or utility within the Field, for the purposes of this Section 3.2, shall not be deemed to be within the Field where a Party is pursuing research, development or commercialization of such Antibody Product only in a field of use other than Cancer.

(b) The Exclusivity Period commenced on the Effective Date and shall end three (3) years thereafter. If (i) the parties reasonably expect that Chiron will be able to offer to the Collaboration at least two (2) additional Validated Targets each year during the extended Exclusivity Period and (ii) Chiron provides an extension notice at least [*] prior to the end of the Exclusivity Period provided for in the first sentence of this Section 3.2(b), Chiron may extend, at its option, the Exclusivity Period by an additional two (2) years. Upon exercise by Chiron of such option, the third event set forth in Section 6.3 shall be deemed to have occurred, and the profit share adjustment provided for in such Section shall be reduced as set forth therein.

(c) Notwithstanding anything to the contrary in this Section 3.2, either Party may conduct research or development activities in the Field relating solely to the identification or validation of Targets.

(d) Notwithstanding anything to the contrary in this Section 3.2, either Party may conduct research and development activities in the Field pursuant to agreements with Third Parties which existed as of the Effective Date, as set forth on **Schedule 3.2(d)**.

(e) Notwithstanding anything to the contrary in this Section 3.2:

(i) Each Party shall have a right to research, develop and/or commercialize any composition of matter or article of manufacture, other than Antibody Products, derived from or otherwise relating to Collaboration Targets (including, without limitation, any small molecule not integral to a targeting Antibody). Each of the Parties acknowledges and agrees that any such activity shall be conducted outside of the Collaboration and shall not be dependent on any right or license granted to it by the other Party under this Agreement for use only in the Collaboration.

(ii) The Parties acknowledge that on September 23, 2004, XOMA entered into a worldwide collaboration with Aphton Corporation ("**Aphton**") for the development and commercialization of anti-gastrin antibodies to treat gastrointestinal and other gastrin-sensitive cancers. XOMA represents and warrants that it has provided Chiron a true and correct redacted copy of such collaboration agreement, prior to the Date of this Agreement. In the event that [*]. For the avoidance of doubt, the rights granted to Chiron pursuant to this Section 3.2(e)(ii) shall be inapplicable to [*].

(iii) XOMA may pursue opportunities to provide, and may provide, contract manufacturing services to Third Parties using its available capacity for products in the Field; *provided* that, during the Exclusivity Period, without Chiron's written consent, such consent not to be unreasonably withheld, XOMA shall not provide contract manufacturing services for products in the Field:

[*]

The Parties acknowledge that nothing in this Agreement shall restrict XOMA's ability to pursue opportunities to provide, or to provide, contract manufacturing services to Third Parties using its available capacity for products outside the Field.

3.3 Collaboration Targets.

(a) **Target Identification Activities**. Notwithstanding anything to the contrary contained in this Agreement, neither Party shall have any obligation to the other Party to conduct Target identification research. In the event that either Party elects to engage in Target identification research, it may do so in its sole discretion.

(b) **Initial Targets**. Chiron has contributed to the Collaboration the initial Targets described on **Schedule 3.3(b)**, and XOMA has accepted such Targets into the Collaboration, thereby making them Collaboration Targets.

(c) **Additional Targets**. The Parties anticipate that in the future either Party may identify additional Targets that such Party has a reasonable basis to believe may have potential utility in the Field and to the Collaboration (collectively, "**Potential Targets**"). Each Party acknowledges that Targets "identified" by Chiron or XOMA may include Targets owned, controlled or initially identified by Third Parties and, therefore, that such Targets may be subject to Third Party licenses, arrangements or other rights. On a regular basis, but no less often than once per quarter, each Party will identify in writing to the other Party any Potential Targets, as well as any Antibody Products which relate to such Potential Targets, that are being considered by such Party. At such time, counsel for each of the Parties shall discuss any intellectual property owned or otherwise controlled by a Third Party known to that Party after reasonable inquiry that relate to such Potential Targets. Except as expressly set forth in Section 3.3(e) below, each Party may, in its sole discretion and expense, perform all research and development with respect to each Potential Target up to the point at which the Potential Target has become a Validated Target.

(d) **Submission of Validated Targets**. If a Potential Target becomes a Validated Target (regardless of any previously unsuccessful efforts to validate such Potential Target), the Party that identifies such Potential Target to the other Party (the "**Identifying Party**") will formally and promptly present the Validated Target to the other Party (the "**Non-Identifying Party**") for inclusion in the Collaboration. Such presentation shall be in the form of a written submission (the "**Target Submission**") and shall include [*]. At such time, counsel for each of the Parties shall discuss in reasonable detail any intellectual property, licenses and Third Party obligations relevant to the Validated Target. [*] Validated Targets may be formally presented for acceptance as Collaboration Targets in the absence of such information. Within [*] of the date of the provision of the Target Submission, the Non-Identifying Party shall either accept or

reject the inclusion of the applicable Validated Target into the Collaboration; *provided* that, in order for the Validated Target to be accepted into the Collaboration, the Parties shall establish an R&D Plan and Budget that includes sufficient resources to advance such Validated Target appropriately (i.e., through completion of the next Go/No Go Decision Point). In the event that, within such [*] period, the Non-Identifying Party has neither approved nor rejected a Validated Target for inclusion into the Collaboration such Validated Target shall be deemed a Dismissed Target as set forth in Section 3.4; *provided* that, if an R&D Plan and Budget has not been established prior to the end of such [*] period, then such period shall be extended for so long as discussions regarding such R&D Plan and Budget continue in good faith but in no event beyond [*] from the date of Target Submission. The Identifying Party will bear all costs and expenses incurred by it in connection with identification and validation work, up to the point when a Validated Target is accepted into the Collaboration, including as provided in this Section 3.3(d).

(e) **Validation Assistance**. From time to time during the Exclusivity Period, but for no more than two (2) Potential Targets per year, at Chiron's expense (based on FTE Rates, where applicable), solely for possible inclusion into the Collaboration as a Validated Target, Chiron may require XOMA to use its Commercially Reasonable and Diligent Efforts to generate Antibodies against a Potential Target. Upon mutual written agreement, XOMA shall conduct additional work at Chiron's expense to assist in the validation of Potential Targets.

(f) **Third Party Technology**. Prior to the generation or optimization of any Antibody corresponding to a Collaboration Target, XOMA shall identify in writing to Chiron the generation and/or optimization technology or technologies that XOMA intends to use to generate and/or optimize such Antibody. To the extent any such technology is the subject of an agreement between XOMA and a Third Party (each, a "**Third Party Technology Agreement**"), XOMA shall also identify such Third Party Technology Agreement, and shall provide a copy of such Third Party Technology Agreement to Chiron, unless a copy of such agreement has been provided previously.

(g) **Pre-clinical Activities of XOMA**. Throughout the Exclusivity Period, XOMA shall reserve sufficient pre-clinical capacity to enable it to conduct pre-clinical activities with respect to at least [*] new Validated Targets accepted into the Collaboration per year at a rate of [*] new Validated Target per calendar quarter.

(h) **Certain Activities of Chiron**. This Agreement shall not impose any restriction upon Chiron with respect to the generation of any Antibody or the making, testing or using, or the research or development, of any Antibody or Antibody Product that binds or interacts with any Target, including any Potential Target, except that, with respect to Antibody generation relating to Collaboration Targets, Chiron may only carry out those activities specifically allocated to it pursuant to R&D Plans and Budgets.

(i) **End of Exclusivity**. The Parties' rights and obligations set forth in Sections 3.3(c), 3.3(d), 3.3(e), 3.3(f) and 3.3(g) shall expire at the end of the Exclusivity Period.

3.4 Dismissed Targets.

(a) **In General**. In the event a Validated Target presented for acceptance into the Collaboration is not approved by the Non-Identifying Party (a "**Dismissed Target**"), the Identifying Party will be free to conduct research and development activities in the Field with respect to such Dismissed Target and to commercialize any resulting products. The Non-Identifying Party will have no rights hereunder to, interest hereunder in or obligations hereunder with respect to such Dismissed Target or any product resulting from such Dismissed Target, except as expressly set forth in paragraph (b) below. For the avoidance of doubt, the Parties acknowledge that [*].

(b) **Antibody Work by XOMA**.

(i) In the event that a Target proposed by Chiron becomes a Dismissed Target during the Exclusivity Period:

[*]

(ii) It is understood that XOMA has access to certain Third Party technologies, including, without limitation, multiple phage display libraries, that may be useful in the generation and/or optimization of antibodies, and that certain contractual limitations restrict XOMA's ability to access such technologies. At Chiron's request, the Parties shall explore the feasibility of accessing such Third Party technologies through XOMA's existing agreements in order to generate and/or optimize Antibodies or Antibody Products for Dismissed Targets.

3.5 Research and Development Plans and Budgets.

(a) **In General**. All research and development activities relating to Collaboration Targets and Collaboration Products will be conducted in accordance with research and development plans and budgets approved in accordance with the terms of this Agreement ("**R&D Plans and Budgets**"). XOMA and Chiron will strive to have alignment on budget and project monitoring and spending under each R&D Plan and Budget. Each R&D Plan and Budget will be project specific and comprise the collection of activities and the associated budget related to a particular "go/no go" decision point (each such decision point a "**Go/No Go Decision Point**"); *provided* that, in any event, such R&D Plan and Budget shall include as a Go/No Go Decision Point completion of each of the project-specific activities in **Schedule 3.5(a)**. R&D Plans and Budgets will assign responsibility for such specific research and development activities to one of the Parties; *provided* that in general XOMA will be responsible for generating and optimizing Antibodies against Collaboration Targets and for manufacturing preclinical supplies and supplies for Phase I and Phase II Clinical Trials. Each R&D Plan and Budget is intended to include sufficient resources to expeditiously advance the corresponding Collaboration Target and/or Collaboration Product. All R&D Plans and Budgets will include cost and resource requirements for each Party to complete the activities leading to the Go/No Go Decision Point(s) included therein.

(b) **Initial Plans and Budgets**. An initial R&D Plan and Budget must be established for each Collaboration Target in order for such Target to be accepted into the Collaboration.

(c) **Subsequent Plans and Budgets**. Once an R&D Plan and Budget is approved in accordance with the provisions of this Agreement (including without limitation Section 5.1(b)(i)), the research and development activities set forth in such R&D Plan and Budget will be deemed approved through completion of the Go/No Go Decision Point included therein. Not later than [*] after reaching each Go/No Go Decision Point, a subsequent R&D Plan and Budget for any such Collaboration Target and/or Collaboration Product will be established in accordance with Section 3.5(a).

(d) **Budget Deviations**. An important objective of the Parties is that potential budget deviations be identified as soon as possible to enable review and approval and/or remedial actions to be agreed upon by the Parties. Any cost increase in a calendar year of more than (i) [*] percent ([*]%) for projects with annual budgets less than or equal to [*] dollars ($[*]), or (ii) [*] percent ([*]%) for projects with annual budgets greater than [*] dollars ($[*]) and less than or equal to [*] dollars ($[*]), or (iii) [*] percent ([*]%) for projects with annual budgets greater than [*] dollars ($[*]) from any R&D Plan and Budget (each an **"Annual Budget Deviation Threshold"**) shall require the approval of the Joint R&D Committee pursuant to Section 5.2(b)(ii) and the Joint Steering Committee pursuant to Section 5.1(b)(i). Upon either Party becoming aware that a cost increase in excess of the Annual Budget Deviation Threshold is reasonably likely or has occurred, such Party shall notify the other Party thereof and the Parties shall promptly convene meetings of the Joint R&D Committee and the Joint Steering Committee, at which the Parties will confer in good faith to determine the cause(s) for the deviation, the appropriate steps to equitably remedy the situation, and the measures to be taken to prevent future such deviations. In the event a cost increase occurs that exceeds the Annual Budget Deviation Threshold, as applicable, based on the criteria above in this Section 3.5(d) with respect to any R&D Plan and Budget without disclosure and discussion between the Parties as set forth in this Section 3.5(d), [*].

(e) **Consolidated Annual Plans and Budgets**. Although each R&D Plan and Budget will continue in effect until the next Go/No Go Decision Point is reached in the absence of a Material Budget Deviation, a consolidated R&D Plan and Budget for all Collaboration research and development activities will be established annually in a timeframe that coincides with the Parties' respective internal annual planning and budget processes. Not later than June 30 of each year, each Project Team will submit to the JRDC for review a draft R&D Plan and Budget. Not later than September 30 of each calendar year, the JRDC shall submit its recommendation for the consolidated R&D Plan and Budget to the Joint Steering Committee for approval. Periodically, the JRDC shall review the R&D Plan and Budget for each Collaboration Product to ensure consistency with the consolidated R&D Plan and Budget, and may propose changes thereto; *provided*, *however*, that the R&D Plan and Budget in effect for reaching a Go/No Go Decision Point with respect to a particular Collaboration Product shall not be modified, except as approved by the Joint Steering Committee. No later than October 31 of each calendar year, the Joint Steering Committee shall approve the consolidated R&D Plan and Budget as part of the approval of the overall Collaboration plan and budget.

3.6 Project Teams.

(a) **In General**. A Project Team will be established and comprised of representatives of both Parties to execute each R&D Plan and Budget (a "**Project Team**"). The

Project Team will endeavor to reach decisions by consensus. If the Project Team is not able to reach consensus on a matter, it will be referred to the JRDC. Each Party will designate a representative to the Project Team who will serve as its primary point of contact. In addition to the primary points of contact, Project Teams will be comprised of appropriate representatives of the relevant functional areas. Composition of each Project Team may vary, depending on the nature of the Project, and will be fluid over time, depending on the phase of research or development.

(b) **Responsibilities of the Project Teams**. Each Project Team will

(i) carry out its approved project in accordance with the R&D Plan and Budget;

(ii) monitor performance of its approved project against the R&D Plan and Budget;

(iii) be responsible for tactical decisions (i.e., decisions within the scope of the R&D Plan and Budget);

(iv) report in reasonable detail on the status of its approved project to the JRDC at least quarterly;*provided* that such report shall be provided to the JRDC promptly in the event of (A) any incurred or forecasted budget deviation that exceeds the Annual Budget Deviation Threshold, as applicable, based on the criteria in Section 3.5(d) above with respect to any R&D Plan and Budget; (B) any material change in the timeline included in the R&D Plan and Budget; (C) any material change in project scope or in the assumptions on which the R&D Plan and Budget was based (including, without limitation, material changes in Commercialization assumptions, such as the status of competitive products); and (D) any material technical issues; and in each case such report shall include a proposed plan of action to address such material change or issue; and

(v) draft and propose to the JRDC further plans and budgets (including product strategy) in accordance with Section 3.5(c).

(c) **Coordination and Transparency**. Each Project Team will meet as needed but no less frequently than once each quarter. The JRDC shall designate a project leader for each Project Team. The project leader will notify the other Party's representatives of the proposed date, time, location and agenda for meetings, which generally will take place one month in advance of JRDC meetings. In the event that either Party cannot participate in any such meeting due to circumstances beyond the reasonable control of such Party, it shall promptly notify the other Party and shall propose an alternative meeting date within ten business days after the originally scheduled meeting date and an alternative mutually convenient meeting date shall be scheduled. Between meetings the members of the Project Team will communicate directly with one another as needed (in many cases, daily) to ensure that all members of the Project Team are promptly and fully apprised of all matters within the scope of the Project Team's responsibilities.

3.7 Pre-Clinical and Phase I and Phase II Clinical Supplies

(a) XOMA shall have the first right to manufacture itself all of the Parties' requirements for Collaboration Products for pre-clinical development, Phase I Clinical Trials and Phase II Clinical Trials (other than anti-CD40 Antibody Product in 2004) and not subcontract such manufacturing, unless mutually agreed by the Parties. In the event that XOMA is unable or reasonably likely to be unable to manufacture such supplies, Chiron shall have the right to manufacture or otherwise provide such supplies or to have such supplies manufactured by a Third Party, and XOMA shall assist in transferring technology, skills and know-how relating to manufacturing to ensure a smooth and orderly transition of manufacturing capability with respect thereto. For avoidance of ambiguity, XOMA hereby grants Chiron a non-exclusive license under XOMA Background IP and XOMA's interest in Collaboration IP to manufacture, either itself or through a Third Party, all of the Parties' requirements for any Collaboration Product XOMA is unable or reasonably likely to be unable to manufacture itself for pre-clinical development, Phase I Clinical Trials and Phase II Clinical Trials (other than anti-CD40 Antibody Product in 2004). The Parties shall mutually establish appropriate procedures to allow forecasting of XOMA's ability to manufacture in accordance with this Section 3.7(a).

(b) Each R&D Plan and Budget shall include a plan and budget for manufacturing the requisite pre-clinical and clinical supplies of the corresponding Collaboration Product(s). The Party responsible for manufacturing shall draft and propose to the JRDC, for inclusion in R&D Plan and Budgets, appropriate manufacturing plans (including available capacity, resources and similar details) and spending forecasts for the manufacture of supplies of each Collaboration Product for pre-clinical development, and Phase I and Phase II Clinical Trials for such Collaboration Product based on forecasts to be provided by the Project Teams.

(c) All Collaboration Product manufactured by the responsible Party that will be used in clinical trials shall comply with all laws and requirements applicable to the use of such Collaboration Product in Phase I and Phase II Clinical Trials, and shall meet the specifications set forth in the applicable Regulatory Filing.

(d) Promptly following execution of this Agreement, the Parties will enter into a supplemental Pre-Clinical and Clinical Supplies Agreement that will include supply provisions and such other terms and conditions as are reasonably necessary to implement such supply provisions. The Parties agree that XOMA shall prepare the first draft of such agreement to initiate the negotiation process.

3.8 Phase III Clinical Supplies. Sourcing of supplies of Collaboration Products for Phase III Clinical Trials will be planned for by the Joint Steering Committee in accordance with Section 5.1(c), on a Collaboration Product-by-Collaboration Product basis, not later than the initiation of clinical studies of such Collaboration Product.

3.9 Opt-Out.

(a) **When Opt-Out Available, Effective**. Either Party (the "**Opting-Out Party**") may opt out by written notice to the other Party and, subject to the provisions of Section 3.9(g) and any applicable Opt-Out Agreement, terminate its research, development, manufacture and Commercialization relating to a Collaboration Target (an "**Opt-Out Target**") and/or a Collaboration Product (an "**Opt-Out Product**") otherwise under the oversight of the Joint Steering

Committee, on a Collaboration Target by Collaboration Target and/or Collaboration Product by Collaboration Product basis, as provided herein (i) at any time upon written agreement of the other Party, (ii) at any time effective upon reaching the next Go/No Go Decision Point related to such Collaboration Product or a Collaboration Product relating to such Collaboration Target, as the case may be, or otherwise terminating the relevant R&D Plan and Budget, in each case in process at the time of such notice, or (iii) in the event of a Material Budget Deviation effective upon the earlier of (A) reaching the next Go/No Go Decision Point related to such Collaboration Product or a Collaboration Product relating to such Collaboration Target, as the case may be, or otherwise terminating the relevant R&D Plan and Budget or (B) the sooner of either (I) [*] following such notice or (II) the end of the calendar year in which such notice was given. Notwithstanding the above, in the event that a Party is in, or reasonably expects to be in, Financial Hardship, the Parties, in good faith, will endeavor to agree (which agreement shall not be unreasonably withheld) whether to treat such Financial Hardship in the same manner and with the same consequences as a Material Budget Deviation. For purposes of this Section 3.9(a), the term "**Financial Hardship**" means a circumstance where continued participation in research, development, manufacture and Commercialization relating to a particular Collaboration Target and/or Collaboration Product would either (x) require a significant curtailment of a Party's activities with respect to other existing on-going projects or other efforts, or (y) threaten a Party's ability to meet its financial obligations with respect to other existing on-going projects or other efforts.

(b) **Continuing Party**. In the event a Party delivers the notice referred to in Section 3.9(a), the other Party (the "**Continuing Party**"), at its sole option and expense and in its sole discretion, may continue to conduct research, development and Commercialization activities with respect to such Opt-Out Target or Opt-Out Product in the Field and may initiate and conduct research, development, manufacturing and Commercialization activities with respect to such Opt-Out Product or Opt-Out Target outside the Field; *provided* that such Continuing Party shall, promptly after such written notification from the Opting-Out Party, notify the Opting-Out Party whether it will continue to conduct such research, development, manufacturing and Commercialization activities with respect to such Opt-Out Target or Opt-Out Product. In the event the Continuing Party thereafter abandons an Opt-Out Target or Opt-Out Product (including all out-licensing activities and efforts with respect thereto), it shall notify the Opting-Out Party, whereupon (i) the licenses and other rights, together with the royalty and other obligations, hereunder with respect to such Opt-Out Target or Opt-Out Product shall be of no further force and effect and (ii) either Party may conduct research, development, manufacture and commercialization thereof without the benefits of, or restriction under, this Agreement.

(c) **Effect of Opt-Out Notice**. Until a Party's opt-out is effective as provided in Section 3.9(a), the Opting-Out Party shall remain obligated to complete those activities for which it is responsible according to all in process R&D Plans and Budgets related to each subject Opt-Out Target or Opt-Out Product, as the case may be, that had previously been set forth in the relevant R&D Plan and Budget (or, if applicable, the activities for which it is responsible according to any R&D Plan and Budget related thereto revised by the Continuing Party to reflect reduced activities and/or expenditures) up to the next Go/No Go Decision Point, but such obligation is expressly limited to the activities set forth in such R&D Plan and Budget (or, if applicable, the R&D Plan and Budget revised by the Continuing Party to reflect reduced activities and/or expenditures).

(d) **Effect of Opt-Out**. Upon effectiveness of a decision to opt out as provided in Section 3.9(a), each Opt-Out Target in which the Opting-Out Party has opted out with respect to such Opt-Out Target shall cease to be a Collaboration Target, and each Opt-Out Product in which the Opting-Out Party has opted out with respect to such Opt-Out Product shall cease to be a Collaboration Product. The Opting-Out Party shall have no further rights to or interest in or obligations with respect to any Opt-Out Target or any Opt-Out Product, other than the right to receive the royalties set forth in this Section 3.9 or Section 6.2(b), as applicable. The Opting-Out Party shall not be responsible for any activities set forth in an R&D Plan and Budget initiated after the effective date of such Party's opt-out. In addition,

(i) until a Party's opt-out is effective as provided in Section 3.9(a), the Opting-Out Party shall be responsible for its share of all costs and expenses actually incurred to achieve, and shall receive its share of profits, if any, actually earned prior to, the next Go/No Go Decision Point as set forth in the R&D Plan and Budget then in effect. Upon opting out, the Opting-Out Party shall use commercially reasonable efforts to transfer to the Continuing Party the Opting-Out Party's responsibilities under such R&D Plan and Budget. In the event that such transition continues after the effective date of such opt-out, the Opting-Out Party shall be reimbursed by the Continuing Party for its expenses incurred after the effective date of such opt-out in achieving such Go/No Go Decision Point at its cost. The Parties agree that the calculation of such expenses shall be made in the same manner as if this Agreement otherwise still applied thereto;

(ii) if a Party opts out of an Opt-Out Target, such Party will be deemed to have also opted out with respect to any future Antibody Products or related activities with respect to such Opt-Out Target but will not be deemed to have opted out with respect to any then existing Collaboration Products or related activities with respect to such Opt-Out Target unless the Opting-Out Party expressly opts out of such existing Collaboration Product(s) in accordance with clause (iii) below;

(iii) if a Party opts out of an Opt-Out Product, such Party will be deemed to have also opted out with respect to the Collaboration Target corresponding to such Opt-Out Product (which shall consequently become an Opt-Out Target) and any then existing Collaboration Products, Antibody Products or related activities with respect to such Opt-Out Target that are at an earlier stage of development than the Opt-Out Product and any future Antibody Products or related activities with respect to such Opt-Out Target, but will not be deemed to have opted out with respect to any then existing Collaboration Product with respect to such Opt-Out Target that is at a later stage of development than the Opt-Out Product; and

(iv) in recognition of the multi-Target, multi-product nature of the Collaboration, the Parties agree to include, from time to time in their discretion to be exercised in good faith, in discussions between the Parties relating to the development and/or Commercialization of Collaboration Targets and/or Collaboration Products, relevant information regarding Opt-Out Targets and/or Opt-Out Products.

(e) **Royalties in the Event of Opt-Out**.

(i) **Opt-Out by XOMA**. In the event that XOMA is the Opting-Out Party, Chiron will pay to XOMA a royalty on Net Sales of any Opt-Out Product or any Antibody Product corresponding to an Opt-Out Target as follows:

Point at Which Opt-Out Occurs	Royalty
After the start of IND-Enabling Studies but before the start of Phase I Clinical Trials	[*]%
After the start of Phase I Clinical Trials but before the start of Phase II Clinical Trials	[*]%
After the start of Phase II Clinical Trials but before the start of Phase III Clinical Trials	[*]%
After the start of Phase III Clinical Trials but before Regulatory Approval of a BLA	[*]%

Notwithstanding the foregoing, in the event Chiron uses a license to the Bacterial Cell Expression Technology to manufacture a Human Engineered™ Opt-Out Product, the applicable royalty on such Opt-Out Product shall not be less than [*]%. In addition, in the event XOMA is the Opting-Out Party, Chiron will be responsible for and shall pay any fees, royalties or other amounts due and payable pursuant to any applicable XOMA Opt-Out IP and any agreement with a Third Party entered into in accordance with Section 12.6 in respect of such Opt-Out Product or Antibody Product corresponding to an Opt-Out Target.

(ii) **Opt-Out by Chiron**. In the event that Chiron is the Opting-Out Party, XOMA will pay to Chiron a royalty on Net Sales of any Opt-Out Product or any Antibody Product corresponding to an Opt-Out Target as follows:

Point at Which Opt-Out Occurs	Royalty Percentage
After the start of IND-Enabling Studies but before the start of Phase I Clinical Trials	[*]%
After the start of Phase I Clinical Trials but before the start of Phase II Clinical Trials	[*]%
After the start of Phase II Clinical Trials but before the start of Phase III Clinical Trials	[*]%
After the start of Phase III Clinical Trials but before Regulatory Approval of a BLA	[*]%

In addition, in the event Chiron is the Opting-Out Party, XOMA will be responsible for and shall pay any fees, royalties or other amounts due and payable pursuant to any applicable Chiron Opt-Out IP and any agreement with a Third Party entered into in accordance with Section 12.6 in respect of such Opt-Out Product or Antibody Product corresponding to an Opt-Out Target.

(f) **Certain Covenants in the Event of Opt-Out**.

(i) Upon an opt-out by a Party, the Opting-Out Party shall immediately, at its own cost and expense, assign and transfer to the Continuing Party the entire right, title and interest held by the Opting-Out Party, to and under, any and all Regulatory Filings relating solely to the Collaboration Product and provide to the Continuing Party access to any and all other

Regulatory Filings relating to the Collaboration Product, in each case obtained from the Opt-Out Target, including without limitation any and all Regulatory Approvals. The Continuing Party shall have the right to file for all Regulatory Approvals with respect to its Opt-Out Products in its own name.

(ii) The Opting-Out Party, at the Opting-Out Party's cost and expense, shall provide to the Continuing Party, or the Continuing Party's designee, if applicable, all commercially reasonable assistance requested by the Continuing Party to utilize information contained in Regulatory Filings relating to the Collaboration Product obtained from the Opt-Out Target assigned and transferred pursuant to Section 3.9(f)(i), and to otherwise effect the intent of the Parties to enable the Continuing Party to continue research, development and Commercialization activities with respect thereto. For the avoidance of doubt, nothing herein is intended to give an Opting-Out Party any right to opt back in to an Opt-Out Target or Opt-Out Product.

(iii) In the event that the Opting-Out Party with respect to a Collaboration Product is responsible (pursuant to an R&D Plan and Budget, or a plan and budget for Commercialization, then in effect) for manufacturing of such Collaboration Product on the effective date of the notice referred to in Section 3.9(a), such Opting-Out Party will contract manufacture such product at cost for the Continuing Party until such time as the Continuing Party is able to establish alternative manufacturing but in no event for more than [*] beyond the effective date of the Opting-Out Party's opt-out. During such [*] period, the Opting-Out Party will provide reasonable assistance to the Continuing Party or to any third party manufacturer as the Continuing Party may designate in its sole discretion to transfer all requisite technology, skills and know-how relating to manufacturing to the Continuing Party and/or such third party manufacturer to ensure a smooth and orderly transition of manufacturing capability at the Continuing Party's expense.

(g) **Third Party Technologies**.

(i) Simultaneously with the delivery by XOMA of written notice of an opt-out with respect to a Collaboration Product or a Collaboration Target in accordance with Section 3.9(a), XOMA shall (A) identify to Chiron in writing each and every technology actually used to generate and/or optimize such Collaboration Product, or the Antibody Product(s) corresponding to such Collaboration Target, which is the subject of such opt-out notice, and (B) provide to Chiron a copy of each Third Party Technology Agreement that covers such technology or technologies, unless a copy of such agreement has been provided previously. In the event any Third Party Agreements cover such technology or technologies, the provisions of **Schedule 3.9(g)** shall apply.

(ii) The Parties acknowledge that circumstances may exist where a Target proposed by Chiron, or Antibody Product(s) corresponding to such Target, or a technology or technologies used by Chiron in connection with a Target or Antibody Product(s), may be the subject of an agreement between Chiron and a Third Party, and that it may be appropriate for XOMA to have rights similar to those of Chiron pursuant to this Section 3.9(g) and **Schedule 3.9(g)**. In the event that Chiron delivers written notice of an opt-out with respect to a Collaboration Product or a Collaboration Target, the provisions of this Section 3.9(g) and **Schedule 3.9(g)** shall apply, *mutatis mutandis*, as if the agreements referred to in the preceding sentence were

Third Party Technology Agreements and Chiron, and not XOMA, was a party to such agreement.

3.10 Applications Outside the Field. Neither Party shall have the right to conduct any research or development activities with respect to any Antibody Product generated against a Collaboration Target, including any Collaboration Product, outside the Field without the prior written consent of the other Party.

3.11 Research and Development Records. Each Party shall maintain written or electronic records of work conducted pursuant to its efforts under Collaboration research and development activities, and information generated in connection with such efforts, in sufficient detail and in a manner appropriate for regulatory and patent purposes. Each Party shall maintain such records and the information of the other Party contained therein in strict confidence in accordance with Article XI. As soon as practicable after the Date of this Agreement, the Parties shall agree upon document standards, templates for reports, a shared electronic document management system, and the manner for transfer of documents.

3.12 Specific Use Capital Equipment. In the event any specific use capital equipment purchased by either Party for use in the Collaboration, the cost of which was properly included in Research and Development Costs, ceases to be used in the Collaboration:

(a) whichever Party operated such equipment can purchase it at its then-current book value by paying the other Party such other Party's pro rata share of the then-current book value based on a useful life in accordance with GAAP. Chiron's share of book value payable to XOMA would be thirty percent (30%) of the then-current book value and XOMA's share of book value payable to Chiron would be seventy percent (70%) of the then-current book value;

(b) if the operating Party does not want to so purchase such equipment, the other Party can purchase it at the then-current book value by paying the operating Party such operating Party's pro rata share of the then-current book value based on a useful life in accordance with GAAP. Chiron's share of book value payable to XOMA would be thirty percent (30%) of the then-current book value and XOMA's share of book value payable to Chiron would be seventy percent (70%) of the then-current book value; and

(c) if such equipment is sold to a Third Party, the Parties will share the proceeds seventy percent (70%) for Chiron and thirty percent (30%) for XOMA.

ARTICLE IV

COMMERCIALIZATION

4.1 In General. Chiron shall be responsible for Commercialization of all Collaboration Products, subject to XOMA's right to employ a portion of the sales force in the United States as described in Section 4.2 and to the transparency provisions described in Section 2.4. Chiron shall use Commercially Reasonable and Diligent Efforts to Commercialize Collaboration Products.

4.2 XOMA Right to Employ Portion of Sales Force.

(a) **In General**. In the event that Chiron determines at any time that additional sales representatives are required over and above its then-current sales force in order to implement the plan and budget for Commercialization of a Collaboration Product approved in accordance with Section 4.3, XOMA shall be entitled (but shall not be required) to employ a portion of the sales force in the United States to detail such Collaboration Product, not to exceed [*]% of the aggregate promotional effort (as measured by the aggregate number of Details) on such Collaboration Product on a Collaboration Product-by-Collaboration Product basis; *provided* that, in connection with any expansion of the sales force relating to any Collaboration Product, XOMA shall be entitled to employ up to all of the additional sales representatives being added each time such additional sales representatives are added until XOMA has sufficient sales representatives to provide [*]% of such Details, and thereafter to employ its pro rata share of any additional sales representatives or further increases in the sales force. Such XOMA sales representatives shall be XOMA employees but shall operate under Chiron's overall supervision and control with respect to such Collaboration Products, and the expenses associated therewith shall be part of the calculation of Pre-Tax Profits under Section 6.2(a). As soon as practicable after XOMA exercises its rights under this Section 4.2(a) with respect to a Collaboration Product, the Joint Commercialization Team shall include within the plan and budget for Commercialization of such Collaboration Product an allocation of responsibilities as between the Chiron and XOMA sales forces.

(b) **Charge to the Collaboration**. In the event that XOMA exercises its right to employ a portion of the sales force in the United States to detail Collaboration Products, the associated expense charged to the Collaboration by XOMA shall not exceed Chiron's per head expense on a geographic basis; *provided* that the expense charged to the Collaboration shall be fairly allocated to reflect the level of effort. Consistent with the foregoing, the Parties agree to decide in good faith upon the specific procedure for making the calculation of such expense at an appropriate time after the Date of this Agreement and prior to the first commercial sale of the first Collaboration Product to be so sold. XOMA shall prepare and furnish to Chiron within [*] after the end of each calendar month a written report showing in specific detail such Commercialization Costs.

(c) **Geographic Limitation**. For the avoidance of doubt: XOMA's right to employ a portion of the sales force to detail Collaboration Products is limited to the United States. XOMA shall not have any right to detail Collaboration Products outside the United States. For the further avoidance of doubt, Chiron is responsible for commercialization of Collaboration Products globally.

4.3 Joint Commercialization Team.

(a) **General**. No later than initiation of Phase III Clinical Trials for any Collaboration Product, the Parties will establish a Joint Commercialization Team with representation from all appropriate functions within Chiron, and with such representation from XOMA as XOMA may elect (up to equal representation). The Joint Commercialization Team will serve as a forum for sharing of information and discussing Chiron's commercialization activities

hereunder. For the avoidance of doubt, Chiron, and not the Joint Commercialization Team, is responsible for commercialization of Collaboration Products.

(b) **Commercialization Strategy, Plans and Budgets**. Promptly upon Chiron having prepared its plan and budget for Commercialization of a Collaboration Product, it will provide such plan and budget to the Joint Commercialization Team. Each year, Chiron will prepare a draft annual plan and budget for Commercialization, a long range financial plan and a draft updated Life Cycle Management plan, for each Collaboration Product being commercialized or for which a plan and budget for Commercialization has been prepared. No later than June 30 of each year, Chiron will present such draft plans and budgets for discussion in the Joint Commercialization Team.

(c) **Decisions**. The Joint Commercialization Team will endeavor to reach consensus on plans and budgets for Commercialization of Collaboration Products. If the Joint Commercialization Team is not able to reach consensus on any such plan(s) and budget(s), Chiron will present such draft plan(s) and budget(s) for discussion in the Joint Steering Committee, and will consider all comments and suggestions in preparation of a final plan and budget for Commercialization of each such Collaboration Product. For purposes of clarification, Chiron, with appropriate regard for XOMA's rights pursuant to Section 4.2, shall cast the deciding vote with respect to the plan and budget for Commercialization of each and every Collaboration Product.

(d) **Reporting and Updates**. Chiron will report on each of the following, as applicable, at each quarterly meeting of the Joint Commercialization Team: (i) actual sales of Collaboration Products, (ii) quarterly forecasts for the quarter following such month, and (iii) such other matters as reasonably necessary to keep XOMA informed of substantive developments with respect to commercialization.

(e) **Meetings and Coordination**. The Joint Commercialization Team will be chaired by a representative from Chiron (the "**Chiron Commercial Chair**"). XOMA will designate one of its representatives to the Joint Commercialization Team as its lead representative (the "**XOMA Commercial Lead**"). The Joint Commercialization Team will meet as needed but no less frequently than once each quarter. The meeting location will be Chiron's marketing headquarters, unless the Chiron Commercial Chair and the XOMA Commercial Lead otherwise agree in writing. The Chiron Commercial Chair will notify the XOMA Commercial Lead of the proposed date, time, and agenda for meetings. In the event that either Party cannot participate in any such meeting due to circumstances beyond the reasonable control of such Party, it shall promptly notify the other Party and shall propose an alternative meeting date within ten business days of the originally scheduled meeting date and an alternative mutually convenient date shall be scheduled. Between meetings, the Chiron Commercial Chair and the XOMA Commercial Lead will communicate directly with one another as needed to ensure that XOMA is promptly and fully apprised of all substantive matters relating to the commercialization of Collaboration Products by Chiron.

4.4 Top Line Sales. The Parties intend that Chiron recognize top-line sales for all Collaboration Products. It is understood that, in order for Chiron to recognize such

top-line sales under GAAP, certain criteria must be satisfied. Such criteria include, without limitation, the following:

(a) Chiron is the obligor to the customer and retains inventory title before customer's order is placed and upon any customer return; and

(b) Chiron controls daily sales and marketing activities, sales and marketing strategies and plans, the establishment of product price, and any discounts, samples or product trials.

XOMA expressly acknowledges Chiron's control over each of the foregoing, and such other criteria as may be necessary for Chiron to recognize top-line sales for all Collaboration Products. From time to time, XOMA shall enter into such further agreements with Chiron as may be reasonably necessary to establish that Chiron meets the requirements for recognizing top-line sales of Collaboration Products.

ARTICLE V

MANAGEMENT OF THE COLLABORATION

5.1 Joint Steering Committee.

(a) **In General**. The Parties will establish a Joint Steering Committee to oversee all Collaboration activities. The Joint Steering Committee shall be composed of three senior representatives from each Party, and shall be chaired by a senior Chiron representative. The Joint Steering Committee shall meet at least semi-annually, and more frequently as the Parties may agree.

(b) **Responsibilities**. The Joint Steering Committee will

(i) set priorities for the Collaboration by reviewing and approving on a portfolio basis with reference to all Collaboration projects, all R&D Plans and Budgets, proposed material modifications thereto (including product strategy) and all cost increases that exceed the Annual Budget Deviation Threshold, as applicable, based on the criteria in Section 3.5(d) with respect thereto for all research and development activities (including, without limitation, process development and clinical supplies); *provided*, *however*, that to the extent any such proposed material modification is not approved, the then-existing R&D Plan and Budget shall govern; and*provided*, *further*, that upon approval of an R&D Plan and Budget pursuant to this Section 5.1(b)(i), such plan and budget will be designated by the Joint Steering Committee as "approved" for purposes of this Agreement;

(ii) discuss but not determine, on a portfolio basis with reference to all other Collaboration projects, the plans and budgets for Commercialization of Collaboration Products described in Section 4.3(b) within thirty (30) days of each submission;

(iii) approve or reject product pipeline entry and exit decisions recommended by the JRDC (including for example, product phase shifts, changes in target indications, development "go/no-go" decisions);

(iv) determine the appropriate course of action in the event of notices of alleged infringement as described in Section 12.5 and the desirability of Third Party IP as described in Section 12.6; and

(v) discuss but not determine other material non-commercial matters relating to the activities of the Parties under this Agreement.

(c) **Decisions**: **In General**. The Joint Steering Committee will endeavor to reach consensus on all matters within the scope of its responsibilities including those as set forth in Section 5.1(b) and Section 4.3(b). If the Joint Steering Committee is not able to reach consensus on any such matter within [*] of the first presentation of such matter to the Joint Steering Committee, it will be referred to business heads of the respective Parties for resolution. The business heads shall meet in person within [*] of such referral and attempt to resolve any differences in good faith. If the business heads are not able to reach agreement within [*] of the first such in person meeting, Chiron will have the right to cast the deciding vote except as expressly set forth in Section 5.1(d) below. Notwithstanding anything to the contrary herein and for the avoidance of doubt, if the JRDC, Joint Commercialization Team, any Project Team or the Joint Patent Committee, as the case may be, is unable to reach consensus on any matter, such matter shall be referred to the Joint Steering Committee for resolution in accordance with this Section 5.1(c) or Section 5.1(d), as applicable; *provided*, *however*, matters within the responsibility of the Project Teams and Joint Patent Committee shall first be referred to the JRDC for resolution and then to the Joint Steering Committee for resolution pursuant to this Section 5.1(c), if necessary.

(d) **Decisions**: [*]**.**

(i) In the event the Joint Steering Committee and business heads of Chiron and XOMA are not able to reach consensus with respect to [*], the dispute related to such [*] shall be resolved by binding baseball-style arbitration in accordance with the procedures set forth in **Schedule 5.1(d)(i)** hereto. For clarification, this Section 5.1(d)(i) shall not apply with respect to [*].

(ii) Notwithstanding Section 5.1(d)(i), arbitration may not be invoked (and Chiron will have the right to cast the deciding vote) in the event that [*].

5.2 Joint Research and Development Committee.

(a) **In General**. The Parties will establish a Joint Research and Development Committee to oversee all research and development activities of the Collaboration. The JRDC will be composed of representatives from each Party with experience in research, development and manufacture of human pharmaceutical products. The JRDC shall have no more than ten members in total. The JRDC will meet at least quarterly, and more frequently as the Parties may agree.

(b) **Responsibilities**. The JRDC will

(i) review, on a portfolio basis with reference to all Collaboration projects, and recommend to the Joint Steering Committee for approval all research and development plans and budgets (including all product strategy and spending) and proposed material modifications thereto for all research and development activities (including without limitation process development and clinical supplies);

(ii) review all research and development budget forecasts and variances on a quarterly basis and recommend to the Joint Steering Committee for review all cost increases that exceed the Annual Budget Deviation Threshold, as applicable, based on the criteria in Section 3.5(d) with respect to any R&D Plan and Budget;

(iii) allocate resources, on a portfolio basis, for all R&D Plans and Budgets;

(iv) guide and monitor Joint Project Teams performance against Go/No Go Decision Points within the R&D Plans and Budgets;

(v) review and discuss all Potential Targets on a regular basis, but no less often than once per quarter, and facilitate their entry into the Collaboration, as appropriate; *provided* that the JRDC may delegate these responsibilities to other agreed upon representatives of the Parties;

(vi) review and decide matters raised by the Project Teams; and

(vii) discuss and consider all other material research and development matters relating to the activities of the Parties under this Agreement.

(c) **Decisions**. The JRDC will endeavor to reach consensus on all matters within the scope of its responsibilities. If the JRDC is not able to reach consensus on any such matter, it will be referred to the Joint Steering Committee for resolution in accordance with the procedure described in Sections 5.1(c) and 5.1(d), as applicable.

5.3 Joint Patent Committee. The Parties will establish a Joint Patent Committee to coordinate all matters relating to the Patent Rights and Know-How relevant to this Agreement and to oversee and direct the prosecution of any Collaboration Patent Rights and the preparation and filing of patent applications claiming any Collaboration Inventions. The Joint Patent Committee shall be comprised of one (1) senior patent attorney from each Party as appointed by such Party. A Party may replace its representative from time to time upon written notice to the other Party. The Joint Patent Committee shall exist until the termination of this Agreement. The Joint Patent Committee will endeavor to reach consensus on all matters within the scope of its responsibilities. If the Joint Patent Committee is not able to reach consensus on any such matter, it will be referred to the Joint Steering Committee for resolution in accordance with the procedures described in Section 5.1(c).

ARTICLE VI

FINANCIAL PROVISIONS

6.1 Initial Payment. XOMA hereby acknowledges receipt from Chiron of the sum of $10,000,000.

6.2 Profit and Cost Sharing.

(a) **Share**. The Parties shall share all Pre-Tax Profits from Collaboration Products and otherwise arising from the Collaboration (e.g., license fees from Third Parties, upfront and other fees from marketing partners, etc.) so that Chiron will receive seventy percent (70%) of such Pre-Tax Profits, and XOMA will receive thirty percent (30%) of such Pre-Tax Profits. Within ten (10) days after the end of each calendar month during which research and development activities are ongoing, each Party shall prepare and furnish to the other Party a written report showing in specific detail the costs actually incurred by such Party for research and development activities during such month. Within ten (10) days after the end of each calendar month during which Commercialization activities are ongoing, Chiron shall prepare and furnish to XOMA a written report showing in specific detail Net Sales for Collaboration Products, Collaboration Cost of Goods Sold, Collaboration Gross Margin, and Commercialization costs recognized by Chiron for Commercialization activities during such month. Within [*] days after the end of each calendar quarter, the Parties shall determine, based on such written reports and such other necessary information, any amounts payable and execute the necessary cash settlement payments so that Chiron recognizes seventy percent (70%) and XOMA recognizes thirty percent (30%) of the total Pre-Tax Profits recognized.

(b) **Conversion from Profit Sharing to Royalties**. Notwithstanding anything in Section 6.2(a) above, on a country-by-country and Collaboration Product-by-Collaboration Product basis at any time upon [*] prior written notice, either Party may irrevocably convert its right to share profits and losses (including Third Party payments) in Commercialization of any Collaboration Product after obtaining Regulatory Approval for such Collaboration Product to a right to receive a royalty on Net Sales of such Collaboration Product in each such country. In the event that Chiron exercises its right under this Section 6.2(b) with respect to a Collaboration Product in any country, it will receive a royalty equal to [*]% of Net Sales of such Collaboration Product in such country and, in the event that XOMA exercises its right under this Section 6.2(b) with respect to a Collaboration Product in any country, it will receive a royalty equal to [*]% of Net Sales of such Collaboration Product in such country. Such a conversion of the sharing of profits and losses to the receipt of a royalty shall not be effective prior to the later of (i) obtaining the first Regulatory Approval for such Collaboration Product or (ii) [*] after receipt of the notice by the Party not exercising its right under this Section 6.2(b) (or such later date as stated in such notice). For purposes of clarification, a Party shall continue to bear its share of (A) all Research and Development Costs with respect to such Collaboration Product until the effective date of conversion from a sharing of profits and losses to the receipt of a royalty under this Section 6.2(b) and (B) all Commercialization Costs including, if applicable, pre-launch ramp-up costs for such [*] notice period.

6.3 Pre-Tax Profit Adjustment. Following the first commercial sale of a Collaboration Product, and until the XOMA Profit Share Differential reaches the Maximum Profit Share Differential (as defined below), XOMA's share of positive Pre-Tax Profits shall be [*] percent ([*]%) and not the thirty percent (30%) provided for in Section 6.2(a). "**Maximum Profit Share Differential**" shall mean thirteen million three hundred thirty thousand dollars ($13,330,000), as reduced by the amounts set forth below upon first achievement of any of the particular events set forth below corresponding to each such particular amount:

	Event	Amount of Reduction
1.	File an IND on a Collaboration Product within 18 months after a decision by the Joint Steering Committee designating such Collaboration Product to be a development candidate (i.e., authorizing IND-Enabling Studies)	$ 1,670,000
2.	Produce a GMP lot of a Collaboration Product within 15 months after initiating process development	$ 1,660,000
3.	Chiron exercises its option to extend the Exclusivity Period to 5 years pursuant to Section 3.2(b)	$ 5,000,000

The reduction in Maximum Profit Share Differential may be applied no more than once for each event. In the event that each and every such particular event has occurred, the Maximum Profit Share Differential shall equal five million dollars ($5,000,000). The Parties acknowledge that the second such event set forth in the Initial Agreement relating to the Human Engineering™ of an [*] Antibody Product was achieved prior to the Date of this Agreement, thereby reducing the profit-share adjustment originally set forth therein of fifteen million dollars ($15,000,000) by one million six hundred seventy thousand dollars ($1,670,000).

6.4 Line of Credit. Simultaneously with the execution of this Agreement, the Parties shall enter into a separate Secured Note Agreement in the form attached hereto as **Schedule 6.4**. For the avoidance of doubt, the line of credit referred to in this Section 6.4, together with the payments from Chiron to XOMA pursuant to Section 6.1, will be the only funds that Chiron will be required to provide to XOMA to fund XOMA's share of Collaboration activities. If, following XOMA's use of the funds available under such line of credit, XOMA does not have sufficient financial resources to cover its share of Collaboration activities, it will opt out of a sufficient number of Collaboration Targets and/or Collaboration Products in accordance with Section 3.9 in order that its resources are sufficient to cover its share of costs and expenses associated with the Collaboration Targets and/or Collaboration Products remaining in the Collaboration.

6.5 Additional Fees.

[*]

ARTICLE VII

RECORDS, RECORD KEEPING AND PAYMENT TERMS

7.1 Payment Records; Audits.

(a) **Records**. Each Party agrees to keep and to require its Affiliates to keep, clear, accurate and complete records in accordance with GAAP for a period of at least [*] in sufficient detail to enable costs and expenses, profits and losses, and profit and loss sharing relating to amounts payable or creditable under this Agreement to be determined.

(b) **Request**. Upon the written request of a Party (the "**Requesting Party**") and not more than once each calendar year, the other Party (the "**Responding Party**") shall permit an independent certified public accounting firm of recognized standing, selected by the Requesting Party and reasonably acceptable to the Responding Party, at the Requesting Party's expense, to have access during normal business hours to the records of the Responding Party as may be reasonably necessary to verify the accuracy of the financial reports and calculations made under this Agreement for any calendar quarter ending not more than [*] prior to the date of such request. The accounting firm shall disclose to both Parties whether the reports and calculations are correct or not, and shall disclose to both Parties the specific details concerning any discrepancies. All information disclosed to such independent accountant, and any verbal or written disclosure by such independent accountant to the Parties, shall be deemed to be Confidential Information.

(c) **Discrepancy**. If any error in favor of either Party is discovered in the course of inspection under this Section 7.1, the other Party, within [*] after the accounting firm's disclosure of its findings, shall pay the first Party the amount (plus interest, if applicable) that the first Party would have received in the absence of such error. Inspections conducted under this Section 7.1 shall be at the expense of the inspecting Party, unless a variation or error in favor of the inspected Party exceeding [*] percent ([*]%) of the amount actually paid for the period covered by the inspection is established in the course of such inspection, whereupon all costs relating to the inspection for such period will be paid by the inspected Party within [*] after the accounting firm's disclosure of its findings.

7.2 Payment Method.

(a) All payments hereunder shall be in United States dollars in immediately available funds and shall be made by wire transfer from a United States bank located in the United States to such bank account as designated from time to time by the Party receiving such payment to the Party making such payment.

(b) Any determination(s) hereunder requiring the conversion of currency shall be made by the Party responsible for such determination(s) in the same manner such Party uses in connection with the preparation of its audited externally published financial statements (or those of its parent company), consistent with GAAP.

7.3 Withholding Taxes. If the laws, rules or regulations require withholding of income taxes or other taxes or other duties imposed on payments made between the Parties,

the Party making a payment under the terms of this Agreement shall make such withholding payments as required and subtract such withholding payments from the payments otherwise to be paid, and shall promptly submit appropriate proof of payment of the withholding taxes to the Party receiving payment. The paying Party shall provide reasonable cooperation to the receiving Party in the event that the receiving Party claims exemption from (or reduction in the rate of) such withholding, including but not limited to, by providing to the receiving Party copies of receipts of payment of such withheld tax or other documents reasonably available to the paying Party.

7.4 Interest on Payments Past Due. Any failure by a Party to make a payment within [*] after the date when due shall obligate such Party to pay interest to the receiving Party at a rate equal to the lesser of: (a) [*] as published in The Wall Street Journal on the date the payment is due or (b) the maximum rate permitted by applicable law (the "**Interest Rate**"). The Interest Rate shall be calculated from the date payment was due until actually received by the receiving party (the "**Interest Period**") based on actual number of days lapsed and a 360-day year. If the Interest Period extends beyond [*], the Interest Rate will be recalculated using [*], as described above, until the payment is received. Interest shall be compounded daily in arrears and shall be due and payable on the tender of the underlying principal amount.

ARTICLE VIII

LICENSES AND RIGHTS

8.1 Collaboration Product Licenses.

(a) Subject to the terms of this Agreement, XOMA hereby grants to Chiron and its Affiliates:

(i) A worldwide, co-exclusive license (or as applicable sublicense) with XOMA, with the right to sublicense at multiple levels, under XOMA Background IP and XOMA's interest in Collaboration IP to make and use Collaboration Targets and Collaboration Products solely for purposes of research and development in the Field, in accordance with R&D Plans and Budgets. As used in this Section 8.1(a)(i), the term "co-exclusive" shall mean that XOMA reserves the right to engage in the activities licensed pursuant to this Section 8.1(a)(i) under the licensed intellectual property itself or through its Affiliate(s) solely in accordance with R&D Plans and Budgets and further reserves the right to grant a similar license as the one granted to Chiron pursuant to this Section 8.1(a)(i) to one or more Third Parties in accordance with R&D Plans and Budgets.

(ii) A worldwide, exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under XOMA Background IP and XOMA's interest in Collaboration IP to make, use, sell, offer for sale and import Collaboration Products solely for purposes of Commercialization in the Field. Notwithstanding anything to the contrary, such exclusive license is and shall be subject to XOMA's right to Detail such Collaboration Products pursuant to and in accordance with Section 4.2 and to any right XOMA may have to manufacture Collaboration Products for use in clinical development following Phase II Clinical Trials in accordance with R&D Plans and Budgets or to

manufacture Collaboration Products as provided in plans and budgets for Commercialization of such Collaboration Products as approved in accordance with Section 4.3(b).

(iii) A worldwide, co-exclusive license, with the right to sublicense at multiple levels, under the Human Engineering™ Technology (or any portion thereof) for use with respect to any Collaboration Product in the Field in accordance with an R&D Plan and Budget and/or Commercialization activities hereunder, at no incremental cost to Chiron, and to otherwise make, use, sell, offer for sale and import Collaboration Products in the Field. Such license is subject to any agreements between Affiliates of XOMA, on the one hand, and any Third Parties, on the other hand, entered into prior to the Effective Date and includes all intellectual property rights under the Human Engineering™ Technology directed to the particular Collaboration Product or Collaboration Products that are subject to the license but not the right to practice the methods of the Human Engineering™ Technology (or any portion thereof) more generally. As used in this Section 8.1(a)(iii), the term "co-exclusive" shall mean that XOMA reserves the right to engage in the activities licensed pursuant to this Section 8.1(a)(iii) under the licensed intellectual property itself or through its Affiliate(s) and, after the Exclusivity Period, with Third Parties, solely in accordance with R&D Plans and Budgets but does not reserve the right during the Exclusivity Period to grant a similar license to the one granted to Chiron pursuant to this Section 8.1(a)(iii) to one or more Third Parties.

(iv) A worldwide, non-exclusive license to Chiron under the Bacterial Cell Expression Technology (or any portion thereof) for use with respect to any Collaboration Target or Collaboration Product in the Field in accordance with an R&D Plan and Budget and/or Commercialization activities hereunder, at no incremental cost to Chiron. Such license shall (A) be assignable and sublicensable in connection with the sale or out-license of such Collaboration Product and any Antibody Products directed against such Collaboration Target, (B) be subject to any agreements between Affiliates of XOMA, on the one hand, and any Third Parties, on the other hand, entered into prior to the Date of this Agreement, and (C) include only the right to use the Bacterial Cell Expression Technology (or relevant portions thereof) with respect to the particular Collaboration Product or Collaboration Products that are subject to the license and not the right to practice the methods of the Bacterial Cell Expression Technology (or any portion thereof) more generally.

(b) Subject to the terms of this Agreement, Chiron hereby grants to XOMA and its Affiliates:

(i) A worldwide, co-exclusive license (or as applicable sublicense) with Chiron, with the right to sublicense at multiple levels, under Chiron Background IP and Chiron's interest in Collaboration IP to make and use Collaboration Targets and Collaboration Products solely for purposes of research and development, in accordance with R&D Plans and Budgets. As used in this Section 8.1(b)(i), the term "co-exclusive" shall mean that Chiron reserves the right to engage in the activities licensed pursuant this Section 8.1(b)(i) under the licensed intellectual property itself or through its Affiliate(s) solely in accordance with R&D Plans and Budgets and further reserves the right to grant

a similar license as the one granted to XOMA pursuant to this Section 8.1(b)(i) to one or more Third Parties in accordance with R&D Plans and Budgets.

(ii) A worldwide, exclusive license, without the right to sublicense, under Chiron Background IP and Chiron's interest in Collaboration IP to make and have made Collaboration Products for use in pre-clinical development and in Phase I Clinical Trials and Phase II Clinical Trials in accordance with Section 3.7 and R&D Plans and Budgets. Notwithstanding the foregoing, such exclusive license is and shall be subject to Chiron's right to manufacture or otherwise provide supplies pursuant to Section 3.7(a).

(iii) A worldwide, non-exclusive license under Chiron Background IP and Chiron's interest in Collaboration IP to make or have made Collaboration Products in accordance with R&D Plans and Budgets for use in clinical development following Phase II Clinical Trials and Commercialization as provided in plans and budgets for Commercialization as approved in accordance with Section 4.3(b).

(iv) A non-exclusive license, without the right to sublicense, under Chiron Background IP and Chiron's interest in Collaboration IP for the sole purpose of Detailing Collaboration Products in the United States, pursuant to XOMA's rights under Section 4.2.

8.2 Opt-Out Product Licenses.

(a) Subject to the terms of this Agreement, effective upon a Collaboration Target or Collaboration Product becoming an Opt-Out Target or Opt-Out Product, as the case may be, as a result of XOMA's exercise of its rights under Section 3.9 following notification by XOMA to Chiron in accordance with Section 3.9(a), XOMA hereby grants to Chiron and its Affiliates:

(i) An exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under XOMA Opt-Out IP to make, use, sell, offer for sale and import any and all Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, in the Field.

(ii) An exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under the Human Engineering™ Technology (or any portion thereof) for use with respect to any Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, in the Field. Such license shall (A) be subject to any agreements between XOMA and its Affiliates, on the one hand, and any Third Parties, on the other hand, entered into prior to the Date of this Agreement; and (B) include all intellectual property rights under the Human Engineering™ Technology (or any portion thereof) directed to the particular Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, that are subject to the license but not the right to practice the methods of the Human Engineering™ Technology (or any portion thereof) more generally.

(iii) A non-exclusive license under the Bacterial Cell Expression Technology (or any portion thereof) for use with respect to any Antibody Products with respect to

such Opt-Out Target or such Opt-Out Product, as the case may be, in the Field. Each such license shall (A) be [*] in connection with the sale or out-license of such Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, (B) be subject to any agreements between XOMA or its Affiliates, on the one hand, and any Third Parties, on the other hand, entered into prior to the effective date of such Opt-Out; *provided* that XOMA and its Affiliates shall not during the Exclusivity Period grant any rights to the Bacterial Cell Expression Technology in the Field to any Third Party that would restrict a non-exclusive license granted pursuant to this Section 8.2(a)(iii) and (C) include only the right to use the Bacterial Cell Expression Technology (or relevant portions thereof) with respect to the particular Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, that are subject to the license and not the right to practice the methods of the Bacterial Cell Expression Technology (or any portion thereof) more generally.

(b) Subject to the terms of this Agreement, effective upon a Collaboration Target or Collaboration Product becoming an Opt-Out Target or Opt-Out Product, as the case may be, as a result of Chiron's exercise of its rights under Section 3.9 following notification by Chiron to XOMA in accordance with Section 3.9(a), Chiron hereby grants to XOMA and its Affiliates an exclusive license (or as applicable sublicense), with the right to sublicense at multiple levels, under Chiron Opt-Out IP to make, use, sell, offer for sale, and import any and all Antibody Products with respect to such Opt-Out Target or such Opt-Out Product, as the case may be, in the Field.

(c) In the event that a Party opts out of research and development activities with respect to a Collaboration Target or Collaboration Product pursuant to Section 3.9, the Opting-Out Party will provide all assistance reasonably requested by the Continuing Party to ensure a smooth and orderly transition of the Opt-Out Target or Opt-Out Product, as the case may be, to the Continuing Party, including the assignment, transfer or sublicense, as appropriate, of any contracts with respect to the exploitation of such Opt-Out Target or Opt-Out Product, as the case may be, in the Field to the Continuing Party, and the assumption by the Continuing Party of any obligations previously borne by the Opting-Out Party in the Field. Such assistance shall include, but shall not be limited to, providing the Continuing Party, at the Opting-Out Party's sole cost and expense, documentation, materials (including, without limitation, then existing expression vectors and cell lines with respect to such Opt-Out Product), reasonable training and technical assistance to transfer technical know-how and skills relating to such Opt-Out Target or Opt-Out Product, as the case may be, to the Continuing Party or its designee by, for example, making its employees and consultants available upon reasonable notice during normal business hours at their respective places of business to consult with the Continuing Party.

8.3 Rights Outside the Field. XOMA and Chiron each acknowledge and agree that the rights and licenses granted to XOMA by Chiron, and the rights and licenses granted to Chiron by XOMA, pursuant to the terms and conditions of this Agreement are only as to the Field. In addition, XOMA and Chiron each agree that (i) Collaboration Products may be developed and commercialized outside the Field, (ii) XOMA, or an Affiliate or a licensee of XOMA, may develop and commercialize an Opt-Out Product for use outside the Field in the event that Chiron is the Opting-Out Party, (iii) Chiron, or an Affiliate or a licensee of Chiron, may develop and commercialize an Opt-Out Product in the event that XOMA is the Opting-Out

Party for use outside the Field, and (iv) Chiron, or an Affiliate or a licensee of Chiron, may develop and commercialize a product derived from a Human Engineered™ Antibody generated from a Dismissed Target pursuant to Section 3.4 for use outside the Field; *provided* that, with respect to (ii), (iii) and (iv) above, [*]. For purposes of clarification, no consideration, other than as set forth in this Agreement for Collaboration Products, Opt-Out Products, and products derived from a Human Engineered™ Antibody generated from a Dismissed Target, whether in the form of fees or royalties, will be due or payable with respect to commercialization of such a product outside the Field.

ARTICLE IX

ENABLING CHIRON

9.1 In General. During the Exclusivity Period and/or within six months thereafter, the Parties will establish appropriate mechanisms to convey to Chiron hands-on experience and tutelage with respect to Antibody generation, optimization, cell line development and manufacturing (including, without limitation, phage display, Human Engineering™ and bacterial and mammalian expression technologies but subject to any limitations and restrictions contained in the licenses and other agreements with Third Parties giving rise to or governing XOMA's access to such technologies), at Chiron's expense based on the applicable FTE Rates.

9.2 Observation and Training.

(a) **Observation Rights**. Subject to the limitations set forth in Section 9.2(c), during the Exclusivity Period and/or within six months thereafter, Chiron may send observers, on reasonable notice and during normal business hours, to observe work being conducted by XOMA pursuant to research and development activities conducted under this Agreement.

(b) **Training**. Subject to the limitations set forth in Section 9.2(c), during the Exclusivity Period and/or within six months thereafter, XOMA shall provide training and technical assistance reasonably requested by Chiron, at Chiron's sole expense, to teach Chiron representatives at XOMA's facilities to perform Antibody generation, optimization, cell line development and manufacturing work in Chiron's facilities.

(c) **Limitations**. The observation rights and training provisions of Sections 9.2(a) and (b) shall be subject to the following limitations: in no event shall XOMA be obligated to admit as observers and/or train more than [*].

9.3 Expression and Engineering Technologies.

(a) During the Exclusivity Period and/or within [*] thereafter, at Chiron's option, XOMA will provide Antibody generation services to Chiron in the Field using the Human Engineering™ Technology, and in such event XOMA shall procure for Chiron from XOMA Technology Ltd. or its Affiliates an exclusive worldwide license in the Field under all intellectual property arising out of the work performed by XOMA under this Section 9.3(a) directed to any resulting Human Engineered™ Antibody, including all Patent Rights and Know-How with respect thereto. The commercial terms for such services and license(s) shall be XOMA Technology Ltd.'s (or its Affiliate's) standard commercial terms on the date of Chiron's request for

such services. Any such license shall (i) be subject to any agreements between XOMA Technology Ltd. and its Affiliates, on the one hand, and any Third Parties, on the other hand, entered into prior to the date of Chiron's request for such services; *provided* that XOMA Technology Ltd. and its Affiliates shall not during the Exclusivity Period grant any rights to the Human Engineering™ Technology in the Field to any Third Party that would restrict an exclusive license granted pursuant to this Section 9.3(a) and (ii) include all intellectual property rights under the Human Engineering™ Technology (or any portion thereof) directed to the particular Antibody Product or Antibody Products that are subject to the license but not the right to practice the methods of the Human Engineering™ Technology (or any portion thereof) more generally.

(b) XOMA hereby agrees, at Chiron's option during the Exclusivity Period and/or within [*] thereafter, to procure for Chiron from XOMA Technology Ltd. or its Affiliates a non-exclusive worldwide license (or sublicense as applicable) under the Human Engineering™ Technology for use with respect to any Antibody Product (other than Collaboration Products and Opt-Out Products) in the Field. Such a license shall (i) be on an Antibody Product-by-Antibody Product basis, (ii) be on XOMA Technology Ltd.'s (or its Affiliate's) standard commercial terms at the time such option is exercised, (iii) be assignable and sublicensable in connection with the sale or out-license of such Antibody Product(s), (iv) be subject to any agreements between XOMA Technology Ltd. and its Affiliates, on the one hand, and any Third Parties, on the other hand, entered into prior to the exercise of such option; *provided* that XOMA Technology Ltd. and its Affiliates shall not during the Exclusivity Period grant any exclusive rights to the Human Engineering™ Technology in the Field to any Third Party that would restrict a non-exclusive license granted pursuant to this Section 9.3(b) and (v) include all intellectual property rights under the Human Engineering™ Technology (or relevant portion thereof) directed to the particular Antibody Product or Antibody Products that are subject to the license but not the right to practice the methods of the Human Engineering™ Technology (or any portion thereof) more generally.

(c) XOMA hereby agrees, at Chiron's option during the Exclusivity Period and/or within [*] thereafter, to procure for Chiron from XOMA Ireland Limited a non-exclusive worldwide license (or sublicense as applicable) under the Bacterial Cell Expression Technology for use with respect to any Antibody Product (other than Collaboration Products and Opt-Out Products) in the Field. Such a license shall (i) be on an Antibody Product-by-Antibody Product basis, (ii) be on XOMA Ireland Limited's standard commercial terms at the time such option is exercised, (iii) be personal to Chiron and not assignable or sublicensable, (iv) be subject to any agreements between XOMA Ireland Limited, on the one hand, and any Third Parties, on the other hand, entered into prior to the exercise of such option; *provided* that XOMA Ireland Limited shall not during the Exclusivity Period grant any exclusive rights to the Bacterial Cell Expression Technology in the Field to any Third Party that would restrict a non-exclusive license granted pursuant to this Section 9.3(c), and (v) include (I) to the extent it is Chiron's intent to use any such technology in conjunction with one or more Third Party collaborators of Chiron for purposes of developing and commercializing such Antibody Product(s), a covenant not to sue under the licensed patents for the benefit of such Third Party collaborators for such purposes; *provided* that each such covenant not to sue shall apply only to such Antibody Product(s) with respect to which Chiron has expended significant research or development effort, (II) only the right to use the Bacterial Cell Expression Technology (or relevant portion thereof) with respect to the particular Antibody Product or Antibody Products that are subject to the license and not

the right to practice the methods of the Bacterial Cell Expression Technology (or any portion thereof) more generally.

9.4 License to Third Party Technology. During the Exclusivity Period, Chiron may request to receive sublicenses from XOMA under Third Party technologies licensed to XOMA, including, without limitation, multiple phage display libraries for use with respect to any Target other than Collaboration Targets, Dismissed Targets and Opt-Out Targets (all of which are covered by other licenses in this Agreement). In the event that XOMA has a right to grant such a sublicense to Chiron, the Parties shall negotiate the grant of such a sublicense on mutually agreeable terms.

9.5 Limitation. Notwithstanding anything to the contrary, XOMA shall have no further obligation to convey any experience or tutelage to Chiron after the effective date of the termination of this Agreement if the termination is due to a material breach by Chiron of a representation, warranty or covenant under this Agreement.

ARTICLE X

REGULATORY MATTERS

10.1 INDs.

(a) **Regulatory Filings**. Chiron will have responsibility for the preparation and filing of any and all Regulatory Filings relating to research and development activities with respect to Collaboration Products, including without limitation IND filings. Any and all such Regulatory Filings shall be held in the name of Chiron.

(b) **Communications with Regulatory Authorities**. In general, Chiron will have responsibility for maintaining Regulatory Filings, and for initiating communications to and for responding to communications from all applicable Regulatory Authorities. Chiron will use reasonable commercial efforts to provide XOMA a reasonable opportunity to review, provide comment and participate in all communications, and shall incorporate those of such comments as can reasonably be incorporated into such communications, relating to research and development activities with respect to Collaboration Products, including without limitation IND filings. Without limiting the generality of the foregoing, to the extent practicable, Chiron will provide copies to XOMA of all written (including electronic) communications with any Regulatory Authority relating to research and development activities with respect to Collaboration Products, and will advise XOMA of the content of any oral communications.

10.2 Regulatory Approval Applications. Chiron will have responsibility for the preparation and filing of any and all Regulatory Approval Applications to obtain Regulatory Approval for Commercialization of a Collaboration Product, whether a BLA in the United States or another form of Regulatory Approval whether in the United States or outside the United States. Any and all such Regulatory Approvals shall be held in the name of Chiron.

10.3 Further Assistance. The Parties acknowledge and agree that, from time to time during the course of research and development, and Commercialization of Collaboration Products, Chiron may require information and assistance from XOMA to assemble, file and

maintain Regulatory Filings with respect to Collaboration Products, or to respond to inquiries from Regulatory Authorities regarding Collaboration Products. XOMA agrees to use all reasonable commercial efforts to provide any and all such information and assistance as reasonably requested by Chiron.

10.4 Drug Safety. As soon as practicable after the Date of this Agreement, the Parties will enter into a separate drug safety agreement ("**Drug Safety Agreement**") which will address, among other things, the reporting, investigation and handling of adverse events, product complaints and product recalls. The Parties agree that Chiron shall prepare the first draft of such agreement to initiate the negotiation process. In the event of a conflict specific to an issue of drug safety between the provisions of the Drug Safety Agreement and any provisions of this Agreement, the provisions of the Drug Safety Agreement shall govern; otherwise, the provisions of this Agreement shall govern. The Drug Safety Agreement may be amended from time to time by written mutual consent of the Parties in the light of changing regulatory requirements or other circumstances.

10.5 Quality. As soon as practicable after the Date of this Agreement, the Parties will enter into a separate quality agreement ("**Quality Agreement**") which will address, among other things, compliance, audit rights, and responsibilities, and maintenance of records. As the Parties agreed, XOMA has prepared the first draft of such agreement to initiate the negotiation process. In the event of a conflict specific to an issue of quality between the provisions of the Quality Agreement and any provisions of this Agreement, the provisions of the Quality Agreement shall govern; otherwise, the provisions of this Agreement shall govern. The Quality Agreement may be amended from time to time by written mutual consent of the Parties in the light of changing regulatory requirements or other circumstances.

10.6 XOMA's Responsibility in Certain Circumstances. The Parties acknowledge that there may be circumstances in which it would be appropriate for XOMA to have responsibility for Regulatory Filings and the other responsibilities placed on Chiron pursuant to Sections 10.1 through 10.3. When the Parties so agree by allocating any such responsibilities to XOMA in an R&D Plan and Budget, the provisions of Sections 10.1 through 10.3 shall apply, mutatis mutandis, as if XOMA and not Chiron were the Party bearing such responsibilities. For the avoidance of doubt, all responsibility for matters covered by this Article X relating to an Opt-Out Product shall be with the Continuing Party.

ARTICLE XI

CONFIDENTIALITY

11.1 Confidentiality.

(a) **Prior Agreements Superseded**. The obligations of confidentiality in this Article XI shall supersede all prior agreements between the Parties regarding obligations of confidentiality and non-use with respect to the subject matter of the Collaboration.

(b) **Treatment**. Except to the extent expressly authorized by this Agreement, required under agreements by which technology is or was acquired for use in the Collaboration

or otherwise agreed to in writing by a disclosing Party, a receiving Party shall keep confidential and shall not publish or otherwise disclose or use for any purpose other than as expressly permitted under this Agreement, any Confidential Information of the disclosing Party, except on a need-to-know basis to the receiving Party's directors, officers, employees, agents, consultants, subcontractors, attorneys and accountants, and others approved by the disclosing Party, to the extent such disclosure is reasonably necessary in connection with the receiving Party's activities or exercise of rights under this Agreement, including, without limitation, the research and development, and Commercialization of Collaboration Products. To the extent that disclosure to any person other than a Regulatory Authority or other governmental body or entity is authorized by this Agreement, prior to disclosure, a Party shall obtain written agreement of such person to hold in confidence and not disclose or use the Confidential Information of the disclosing Party, which agreement shall contain obligations of confidentiality and non-use no less restrictive than those set forth in this Article XI. The receiving Party shall notify the disclosing Party promptly upon discovery of any unauthorized use or disclosure of the disclosing Party's Confidential Information.

(c) **Exclusions**. Notwithstanding anything to the contrary, the obligations of the Parties under this Section 11.1 shall not apply to the extent that Confidential Information of the other Party (as determined by competent documentation):

(i) was known or used by the receiving Party, other than under an obligation of confidentiality, prior to its date of receipt by the receiving Party; or

(ii) either before or after the date of the disclosure to the receiving Party is lawfully disclosed to the receiving Party by independent sources rightfully in possession of such information, other than under an obligation of confidentiality; or

(iii) either before or after the date of the disclosure to the receiving Party becomes published or generally known to the public (including information known to the public through the sale of products in the ordinary course of business) through no fault or omission on the part of the receiving Party; or

(iv) is independently developed by or for the receiving Party without reference to or reliance upon the Confidential Information.

11.2 Authorized Disclosure. The obligations of nondisclosure and nonuse under this Article XI shall not apply to the extent that a Party is required to disclose information by applicable law, regulation or order of a governmental agency or a court of competent jurisdiction; *provided*, *however*, that such Party shall provide written notice thereof to the other Party, consult with the other Party with respect to such disclosure, provide the other Party a reasonable opportunity to object to any such disclosure or to request confidential treatment thereof and, except to the extent such information becomes part of the public domain as a result of disclosure permitted pursuant to this Section 11.2, shall continue to treat such Confidential Information as such with respect to any Third Party to whom such information is not so required to be disclosed.

11.3 Survival. This Article XI shall survive expiration or termination of this Agreement for the longer of (a) a period of [*] or (b) as required pursuant to any confidentiality

agreement between either of the Parties and any Third Party pursuant to which Confidential Information is shared between the parties to such confidentiality agreement in connection with the Collaboration.

11.4 Publications.

(a) **In General**. The Joint Steering Committee will seek advice on overall strategy for publication and presentation of information and data arising out of the Collaboration, including for example from the Joint Patent Committee, and from the Project Teams. Publication and/or presentation of information and/or data arising out of the Collaboration shall require the prior approval of the JRDC.

(b) **Publication Process**. Except as required by applicable law, regulation or court order, each Party agrees that it shall not publish or present the results of work related to any Collaboration Target or Collaboration Product, including but not limited to, clinical trials carried out by such Party under this Agreement, without the opportunity for prior review by the other Party. Each Party shall provide to the other Party the opportunity to review any of the submitting Party's proposed abstracts, manuscripts, publications or presentations (including information to be presented verbally) which relate to any Collaboration Target or Collaboration Product (including any proposed Third Party publication submitted to the submitting Party for review, to the extent the applicable terms of any agreement with such Third Party permit) for at least [*], with respect to abstracts, and at least [*], with respect to manuscripts, publications and presentations, prior to their intended presentation or submission for publication, and such submitting Party agrees, upon written request from the other Party, not to submit such abstract or manuscript for publication or to make such presentation until the other Party is given [*] from the date of such written request to seek appropriate patent protection for any Collaboration Invention in such publication or presentation which it reasonably believes is patentable. Any disagreements between the Parties related to publications will be referred to the Joint Steering Committee for resolution in accordance with Section 5.1(c). Once such abstracts, manuscripts or presentations have been reviewed by each Party and have been approved for publication, the same abstracts, manuscripts or presentations do not have to be provided again to the other Party for review for a later submission for publication. The reviewing Party shall use reasonable efforts to expedite reviews for abstracts or poster presentations, if so reasonably requested by the submitting Party. Each Party shall also have the right to require that its Confidential Information or other proprietary information that is proposed to be disclosed in any such proposed publication or presentation be deleted prior to such publication or presentation. In the event that either Party submits any manuscript or other publication relating to a Collaboration Target or a Collaboration Product, it will consider and acknowledge the contributions of the other Party, including, as appropriate, co-authorship, giving equal prominence in such manuscript or other publication to the name of each Party.

11.5 Terms of This Agreement; Press Release; Publicity. Neither Party shall disclose any confidential terms or conditions of this Agreement to any Third Party without the prior consent of the other Party; *provided*, *however*, that a Party may disclose the terms or conditions of this Agreement, (a) to government authorities where and to the extent required by applicable law, regulation or court order (and with appropriate requests made for confidential treatment), including filings required to be made by law with the United States Securities and Exchange Commission and any market on which a Party's securities are traded, (b) to a Party's

accountants or lawyers, and (c) to a Third Party under an obligation of confidentiality in connection with a bona fide written proposal from such Third Party and an authorization by XOMA's Board of Directors to negotiate a significant equity investment by or in such Party or a merger, consolidation or similar transaction with such Party or a sale of all or substantially all of the assets of such Party. Each Party shall be entitled to make or publish any public statement consistent with the contents of the press release issued in connection with the execution of the Initial Agreement and any public disclosure thereafter. Subject to the immediately preceding sentence, all publicity, press releases and other announcements relating to this Agreement or the transactions contemplated hereby shall be reviewed in advance by and subject to the approval of both Parties; except that such review and approval shall not be required for any announcement that discloses the existence of this Agreement without disclosing any of its non-public terms.

ARTICLE XII

INTELLECTUAL PROPERTY

12.1 Ownership.

(a) **Collaboration Inventions and Collaboration IP**.

(i) Chiron and XOMA each shall own an undivided interest in and to any and all Collaboration Inventions and Collaboration IP regardless of inventorship. Except as otherwise provided in this Agreement (including, for example, Article VIII), neither Chiron nor XOMA shall have the right to (x) exploit Collaboration Inventions and Collaboration IP without the prior approval of the Joint Steering Committee in a manner directed to Collaboration Targets or Collaboration Products or (y) Exploit Collaboration Inventions and Collaboration IP without the prior approval of the Joint Steering Committee (A) in the Field during the Exclusivity Period and for a period of [*] thereafter or (B) outside the Field for a period of [*] from the Effective Date. Any and all cash or other similar economic consideration (including, without limitation, any premium received on an equity investment, but not the market value of such equity investment, in Chiron or XOMA, as the case may be) received as a result of such Exploitation and attributable to such Collaboration Invention(s) or Collaboration IP being Exploited (but excluding payments for funded research and development and for reimbursable expenses) shall be shared seventy percent (70%) to Chiron and thirty percent (30%) to XOMA.

(ii) For the avoidance of doubt and notwithstanding anything herein to the contrary, (A) the restrictions and obligations of this Section 12.1(a) shall not apply to any use of such Collaboration Inventions and/or Collaboration IP (x) in the context of XOMA's collaboration with Aphton for the development and commercialization of anti-gastrin and/or anti-gastrin receptor antibodies to treat gastrointestinal and other gastrin-sensitive cancers or (y) directed to any Dismissed Target, and (B) the Parties acknowledge that, to the extent any Collaboration Invention and/or Collaboration IP is covered by a license or other agreement with a Third Party, such Collaboration Invention and/or Collaboration IP shall, for all purposes of this Agreement, be subject to the financial and other obligations, limitations and restrictions contained in such Third Party license or agreement.

(iii) (A) Notwithstanding Section 12.1(a)(i), with respect to any improvement to any XOMA Core Technology that is a Collaboration Invention and/or Collaboration IP (a "**Core Technology Improvement**") and that is invented solely by employees of XOMA, XOMA shall have the right and license, with the right to grant licenses and sublicenses, [*], to make, have made, use, sell, offer to sell and import, either on its own or with or to a Third Party, each such Core Technology Improvement outside the Collaboration. XOMA's rights under this Section 12.1(a)(iii)(A) shall not extend to any Collaboration Targets or Collaboration Products and, during the Exclusivity Period, shall not extend to any activities within the Field. Chiron, on an exclusive, perpetual and [*], hereby grants to and licenses XOMA all of its undivided interest in and to all Core Technology Improvements invented solely by employees of XOMA; *provided, however*, that Chiron shall have, for its own use, on its own behalf or in the context of a Bona Fide Collaboration to which Chiron is a party, except as to Collaboration Targets and Collaboration Products, a non-exclusive, perpetual and [*] license, without the right to grant licenses or sublicenses, outside the Collaboration to make, have made, use, sell, offer to sell and import each such Core Technology Improvement outside the Field and, commencing at the end of the Exclusivity Period, in the Field.

(B) Notwithstanding Section 12.1(a)(i), with respect to any Core Technology Improvement that is invented solely by employees of Chiron, Chiron shall have the right and license, with the right to grant licenses and sublicenses, [*], to make, have made, use, sell, offer to sell and import, either on its own or with or to a Third Party, each such Core Technology Improvement outside the Collaboration. Chiron's rights under this Section 12.1(a)(iii)(B) shall not extend to any Collaboration Targets or Collaboration Products and, during the Exclusivity Period, shall not extend to any activities within the Field. XOMA, on an exclusive, perpetual and [*], hereby grants to and licenses Chiron all of its undivided interest in and to all Core Technology Improvements invented solely by employees of Chiron; *provided, however*, that XOMA shall have, except as to Collaboration Targets and Collaboration Products, a non-exclusive, perpetual [*] license, with the right to grant licenses and sublicenses, outside the Collaboration to make, have made, use, sell, offer to sell and import each such Core Technology Improvement outside the Field and, commencing at the end of the Exclusivity Period, in the Field; *provided, further,* that in the event of any Exploitation of any such Core Technology Improvement by XOMA, any payments received by XOMA as a result of such Exploitation and attributable to the Core Technology Improvement being Exploited shall be shared [*] percent ([*]%) to Chiron and [*] percent ([*]%) to XOMA.

(C) Notwithstanding Section 12.1(a)(i), with respect to any Core Technology Improvement that is invented jointly by employees of Chiron and XOMA, each Party shall have the right and license, with the right to grant licenses and sublicenses, [*], to make, have made, use, sell, offer to sell and import, either on its own or with or to a Third Party, each such Core Technology Improvement outside the Collaboration. The rights of each Party under this Section 12.1(a)(iii)(C) shall not extend to any Collaboration Targets or Collaboration Products and, during the Exclusivity Period, shall not extend to any activities within the Field. Notwithstanding the first sentence of this Section 12.1(a)(iii)(C), XOMA may, in its discretion, designate any one or more Core Technology Improvements jointly invented by employees of Chiron and XOMA as being capable of Exploitation

only by XOMA (each, a "Designated Core Technology Improvement"). In such event, Chiron, on an exclusive, perpetual and [*], shall grant to and license XOMA all of its undivided interest in and to such Designated Core Technology Improvement; *provided, however*, that Chiron shall have, for its own use, on its own behalf or in the context of a Bona Fide Collaboration to which Chiron is a party, except as to Collaboration Targets and Collaboration Products, a non-exclusive, perpetual and [*]license, without the right to grant licenses or sublicenses, outside the Collaboration to make, have made, use, sell, offer to sell and import each such Designated Core Technology Improvement outside the Field and, commencing at the end of the Exclusivity Period, in the Field; *provided, further,* that in the event of any Exploitation of any such Designated Core Technology Improvement by XOMA, any payments received by XOMA as a result of such Exploitation and attributable to the Designated Core Technology Improvement being Exploited shall be shared [*] percent ([*]%) to Chiron and [*] percent ([*]%) to XOMA.

(D) To the extent the laws of any country governing any Core Technology Improvement require the agreement of the other joint owner(s) of such Core Technology Improvement in order for a Party to enjoy the rights or licenses provided for by this Section 12.1(a)(iii), Chiron and XOMA each hereby agrees to such Exploitation by the other Party. With respect to the rights of each of the Parties under this Section 12.1(a)(iii), neither Party pursuant to this Section 12.1(a)(iii) grants to the other Party any rights or licenses to any patents or patent applications (other than those claiming Core Technology Improvements) which may dominate or may otherwise be necessary to the making, having made, use, sale, offering for sale or importing of any Core Technology Improvement. Each of the Parties acknowledges and agrees that this Section 12.1(a)(iii) is not intended to modify, and does not modify, the rights granted by and between the Parties under Article VIII. Inventorship for purposes of this Section 12.1(a)(iii) shall be determined in accordance with United States Patent law.

(iv) [*].

(v) [*].

(b) **Chiron Background IP and Inventions Outside Collaboration**. As between Chiron and XOMA, Chiron shall own the entire right, title and interest in and to any and all (i) Chiron Background IP and (ii) Inventions made, conceived or reduced to practice by Chiron, either alone or jointly with a Third Party, outside the Collaboration, and Know-How or Patent Rights including, claiming or covering such Inventions. Inventorship of Inventions for purposes of this Section 12.1(b) shall be determined in accordance with United States patent law.

(c) **XOMA Background IP and Inventions Outside Collaboration**. As between XOMA and Chiron, XOMA shall own the entire right, title and interest in and to any and all (i) XOMA Background IP and (ii) Inventions made, conceived or reduced to practice by XOMA, either alone or jointly with a Third Party, outside the Collaboration, and Know-How or Patent Rights including, claiming or covering such Inventions. Inventorship of Inventions for purposes of this Section 12.1(c) shall be determined in accordance with United States patent law.

12.2 Disclosure. Each Party, within [*] after the end of each calendar quarter, shall submit an invention disclosure or, if applicable, a draft patent application to the other Party describing each and every Collaboration Invention made, conceived or reduced to practice during the just-ended calendar quarter which such Party believes may be patentable. The Parties, through the Joint Patent Committee, shall decide whether to file a patent application claiming or covering such Invention, as set forth in Section 12.3.

12.3 Patent Prosecution.

(a) **Collaboration Patent Rights**. The Parties, through the Joint Patent Committee, shall establish a patent strategy for all Collaboration Patent Rights claiming or covering Collaboration Inventions. As part of such patent strategy, the Parties shall designate, on a Collaboration Invention-by- Collaboration Invention basis, one Party to be responsible for the filing, prosecution (including any interferences, oppositions, reissue proceedings and reexaminations) and maintenance of all Collaboration Patent Rights claiming or covering a Collaboration Invention. Each Party shall be provided (i) a draft of each and every patent application claiming or covering a Collaboration Invention prior to the filing of such patent application, allowing adequate time for review and comment by each Party; *provided*, *however*, that the Party responsible for any such patent application shall not be required to delay the initial filing of such patent application if such delay would jeopardize the ability of the Parties to secure priority status against Third Parties; and (ii) copies of all correspondence from any and all patent offices concerning patent applications within the Collaboration Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If the responsible Party decides not to continue the prosecution or maintenance of any patent application or patent within the Collaboration Patent Rights, it shall promptly notify the other Party thereof. Following such notice, the other Party may, in its discretion, take over the prosecution and maintenance of any such patent application or patent within the Collaboration Patent Rights. All costs and expenses for the filing, prosecution (including any interferences, oppositions, reissue proceedings and reexaminations) and maintenance of Collaboration Patent Rights (other than Patent Rights solely within Chiron Opt-Out IP and/or XOMA Opt-Out IP) shall be shared seventy percent (70%) by Chiron and thirty percent (30%) by XOMA. All costs and expenses for the filing, prosecution (including any interferences, oppositions, reissue proceedings and reexaminations) and maintenance of Collaboration Patent Rights solely within Chiron Opt-Out IP and/or XOMA Opt-Out IP shall be borne 100% by the Continuing Party. A Party who files a patent application claiming or covering a Collaboration Invention, or who is responsible for the prosecution of a patent application within the Collaboration Patent Rights, shall take reasonable steps to insure that it does not take any action or make any statement that would reasonably be expected to cause material harm to the patentability, validity or enforceability of any Chiron Background IP, XOMA Background IP, or other Collaboration Patent Right without first obtaining the informed consent of the other Party. In the event that an interference is declared by a Patent and Trademark Office between one or more patents or patent applications owned solely by one Party relating to any Targets with potential utility in the Field or that constitute Patent Rights claiming or covering any Collaboration Target that are relevant to the Collaboration, and one or more patents or patent applications owned or otherwise controlled solely by the other Party that are relevant to the Collaboration, or any of the above and one or more patents or patent applications owned or otherwise controlled jointly by the Parties pursuant to the Collaboration, including where such declared interference involves patents or patent

applications owned by a Third Party or Third Parties, then the Parties shall in good faith establish within thirty (30) days of the declaration of such interference or such other time as agreed upon a mutually agreeable process to resolve solely those portions of such interference or interferences which relate to matters in dispute between Chiron and XOMA in a reasonable manner in conformance with all applicable legal standards and to maximize the scope, priority, validity and/or enforceability of the Patent Rights licensed or co-owned hereunder.

(b) **Patent Rights Controlled by Chiron**. Chiron shall prosecute and maintain, at its sole expense, the Patent Rights Controlled by Chiron (including, for example, Patent Rights within Chiron Background IP and Patent Rights claiming or covering Inventions made, conceived or reduced to practice by Chiron outside the Collaboration). Chiron shall provide XOMA with (i) drafts of each and every patent application within the Patent Rights Controlled by Chiron necessary or useful for, and being utilized in, the research and development, and/or Commercialization of Collaboration Products ("**Related Chiron Patent Rights**"); and (ii) copies of all correspondence from any and all patent offices concerning patent applications within the Related Chiron Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If Chiron decides not to continue the prosecution or maintenance of any patent application or patent within the Related Chiron Patent Rights, it shall promptly notify XOMA thereof. Following such notice, XOMA may take over prosecution and maintenance of such patent application or patent within the Related Chiron Patent Rights that claims or covers a product or products obtained from Collaboration Targets provided to the Collaboration by Chiron, and thereafter such patent application or patent will be deemed a patent application or patent within the Related XOMA Patent Rights, as further described in Section 12.3(c) below.

(c) **Patent Rights Controlled by XOMA**. XOMA shall prosecute and maintain, at its sole expense, the Patent Rights Controlled by XOMA (including, for example, Patent Rights within XOMA Background IP or XOMA Core Technologies and Patent Rights claiming or covering Inventions made, conceived or reduced to practice by XOMA outside the Collaboration). XOMA shall provide Chiron with (i) drafts of each and every patent application within the Patent Rights Controlled by XOMA necessary or useful for, and being utilized in, the research and development, and/or Commercialization of Collaboration Products ("**Related XOMA Patent Rights**"); and (ii) copies of all correspondence from any and all patent offices concerning patent applications within the Related XOMA Patent Rights and an opportunity to comment on any proposed responses, voluntary amendments and submissions of any kind to be made to any and all such patent offices. If XOMA decides not to continue the prosecution or maintenance of any patent application or patent within the Related XOMA Patent Rights, it shall promptly notify Chiron thereof. Following such notice, Chiron may take over prosecution and maintenance of such patent application or patent within the Related XOMA Patent Rights that claims or covers a product or products obtained from Collaboration Targets provided to the Collaboration by XOMA, and thereafter such patent application or patent will be deemed a patent application or patent within the Related Chiron Patent Rights, as further described in Section 12.3(b) above.

(d) **Cooperation**. At the request of the Party performing the prosecution of any patent application under this Section 12.3, the other Party will cooperate, in all reasonable ways, in connection with the prosecution and maintenance of all such patent applications. Each Party shall make available to the other Party or its respective authorized attorneys, agents or

representatives such of its employees or consultants as the other Party in its reasonable judgment deems necessary in order to assist such other Party with the prosecution and maintenance of such patents. Each Party shall sign or use commercially reasonable efforts to have signed at no charge to the other Party all legal documents necessary in connection with such prosecution and maintenance.

(e) **Updates on Developments**. Notwithstanding anything to the contrary, the Party performing the prosecution and maintenance of any patent application or patent within the Collaboration Patent Rights, the Related Chiron Patent Rights or the Related XOMA Patent Rights in accordance with this Section 12.3 shall advise the other Party of any action or development in the prosecution or maintenance of such patent application or patent, including, for example, any action or development concerning the question of scope of coverage, the issuance, rejection, or revocation of any right with respect to such patent application or patent, the declaration of and status and outcome of any interference, and the filing of and status and outcome of any opposition to any such patent application or patent.

12.4 Enforcement of Patent Rights.

(a) **Enforcement of Collaboration Patent Rights**.

(i) **Primary Enforcement Right**. In the event either Party becomes aware of a suspected infringement of a patent within the Collaboration Patent Rights or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Collaboration Patent Rights, such Party shall notify the other Party promptly, and following such notification, the Parties shall discuss the situation. In any such circumstance, Chiron shall have the first right (with associated expenses charged to the Collaboration), but shall not be obligated, to bring legal action to enforce the Parties' rights under the Collaboration Patent Rights or to defend such proceedings. XOMA will provide reasonable assistance to Chiron in any such action or proceeding, including for example lending XOMA's name to such action or proceeding if requested by Chiron or required by law, and shall have a right to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Collaboration Patent Rights may be entered into by Chiron without the prior consent of XOMA, which consent shall not be unreasonably withheld.

(ii) **Secondary Enforcement Right**. If Chiron elects not to bring any legal action for infringement or to defend any proceeding described in Section 12.4(a)(i) and so notifies XOMA, then XOMA may (with associated expenses charged to the Collaboration) bring such a legal action. Chiron will provide reasonable assistance to XOMA in any such action or proceeding, including for example, lending Chiron's name to such action or proceeding if requested by XOMA or required by law, and shall have a right to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Collaboration Patent Rights may be entered into by XOMA without the prior consent of Chiron, which consent shall not be unreasonably withheld.

(iii) **Recoveries**. In the event either Party exercises the rights conferred in this Section 12.4(a) and recovers any damages or other sums in such action, suit or proceeding or in settlement

thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, seventy percent (70%) of such funds shall be retained Chiron and thirty percent (30%) of such funds shall be retained by the XOMA or, in the event such recoveries relate solely to an Opt-Out Target or Opt-Out Product, [*]% of such funds shall be retained by the Continuing Party.

(b) **Enforcement of Patent Rights Controlled by Chiron**.

(i) **Enforcement by Chiron**. In the event either Party becomes aware of a suspected infringement of a patent within the Related Chiron Patent Rights (including, for example, Patent Rights within Chiron Background IP and Patent Rights claiming or covering Inventions made, conceived or reduced to practice by Chiron outside the Collaboration) or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Related Chiron Patent Rights, such Party shall notify the other Party promptly, and following such notification, the Parties shall confer. Chiron shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. XOMA will provide reasonable assistance to Chiron in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by Chiron or required by law. XOMA shall have the right to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Related Chiron Patent Rights that claims or covers a Collaboration Product may be entered into by Chiron without the prior consent of XOMA, which consent shall not be unreasonably withheld.

(ii) **Recoveries**. In the event Chiron exercises the rights conferred in this Section 12.4(b) and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, all such funds shall be retained by Chiron; *provided*, *however*, if such recovery relates to a product in the Field competitive to a Collaboration Product, seventy percent (70%) of such funds shall be retained by Chiron and thirty percent (30%) of such funds shall be retained by XOMA.

(c) **Enforcement of Patent Rights Controlled by XOMA**.

(i) **Enforcement by XOMA**. In the event either Party becomes aware of a suspected infringement of a patent within the Related XOMA Patent Rights (including, for example, Patent Rights within XOMA Background IP or XOMA Core Technologies and Patent Rights claiming or covering Inventions made, conceived or reduced to practice by XOMA outside the Collaboration) or the institution by a Third Party of any proceedings for the revocation of, or to invalidate or render unenforceable, any patent within the Related XOMA Patent Rights, such Party shall

notify the other Party promptly, and following such notification, the Parties shall confer. XOMA shall have the right, but shall not be obligated, to bring an infringement action or to defend such proceedings at its own expense, in its own name and entirely under its own direction and control. Chiron will provide reasonable assistance to XOMA in such actions or proceedings if so requested, and will lend its name to such actions or proceedings if requested by XOMA or required by law. Chiron shall have the right to participate and be represented in any such suit by its own counsel. No settlement of any such action or defense which restricts the scope or affects the enforceability of a patent within the Related XOMA Patent Rights that claims or covers a Collaboration Product may be entered into by XOMA without the prior consent of Chiron, which consent shall not be unreasonably withheld.

(ii) **Recoveries**. In the event XOMA exercises the rights conferred in this Section 12.4(c) and recovers any damages or other sums in such action, suit or proceeding or in settlement thereof, such damages or other sums recovered shall first be applied to all out-of-pocket costs and expenses incurred by the Parties in connection therewith, including attorneys fees. If such recovery is insufficient to cover all such costs and expenses of both Parties, it shall be shared in proportion to the total such costs and expenses incurred by each Party. If after such reimbursement any funds shall remain from such damages or other sums recovered, all of such funds shall be retained by XOMA; *provided*, *however*, if such recovery relates to a product in the Field competitive to a Collaboration Product, seventy percent (70%) of such funds shall be retained by Chiron and thirty percent (30%) of such funds shall be retained by XOMA.

12.5 Allegations of Infringement by Third Parties.

(a) **In General**. In the event that either Party receives notice that the use, development, manufacture, sale, import or export of a Collaboration Target or Collaboration Product or any other action by either of them under this Agreement, during the term of this Agreement, is alleged to be a violation of the patent or other intellectual property rights of a Third Party, it shall promptly notify the other Party. The Joint Steering Committee shall promptly determine an appropriate response and course of action. Chiron will have the right to control any defense, using counsel selected by it with the consent of XOMA (which consent shall not be unreasonably withheld). [*] The Party controlling such action, as provided in this Section 12.5, shall consult with the other Party, and give due consideration to any concerns the other Party may raise, with respect to all significant matters relating to such action. The costs thereof (including any damages, costs or expenses resulting from any action) shall be shared 70% (Chiron)/30% (XOMA) between the Parties (unless such allegations relate only to a Collaboration Target or Collaboration Product as to which one Party has opted out, in which case all such costs shall be borne by the other Party). The Party controlling such action shall not admit the invalidity of any Collaboration Patent Rights or settle any such suit, without the written consent of the other Party (which shall not be unreasonably withheld or delayed). Any recovery obtained as a result of infringement actions governed by this Section 12.5 shall be treated as provided in Section 12.4(a)(iii).

(b) **Selection of Negotiating Party**. The Joint Steering Committee shall determine which Party shall negotiate with said Third Party for a suitable license or assignment and execute such license or assignment; *provided*, *however*, that XOMA and/or its Affiliates shall be such Party for any such license or assignment relating to the XOMA Background IP or the

XOMA Core Technologies and Chiron shall be such Party for any such license or assignment relating to the Chiron Background IP; *provided*, *further*, that such Party shall enter into no such agreement unless it has first obtained the other Party's written approval of the terms of such agreement, including the amounts of any royalties or payments, which approval shall not be unreasonably withheld. If such negotiation results in a consummated agreement, such Party shall make all payments to the Third Party and such payments shall be allocated in accordance with the allocation of other costs in accordance with Section 6.2.

12.6 Third Party Licenses.

(a) [*]

(b) **Resolution of Disputes**. If the Joint Patent Committee is unable to reach a determination with respect to whether Third Party intellectual property constitutes Useful Third Party IP, then such issue shall be presented to the JRDC for determination. For the avoidance of doubt, either Party may enter into a license with respect to, and may practice, any such Third Party intellectual property for purposes unrelated to this Agreement.

12.7 Trademarks.

(a) **Collaboration Product Marks**. Chiron will own all right, title and interest in and to all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with all Collaboration Products. Chiron hereby grants to XOMA a fully paid-up, non-exclusive license (with Chiron) to use all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with all Collaboration Products for the Detailing activities of XOMA provided for in this Agreement. Chiron, with assistance from the Joint Patent Committee, shall be responsible for all decisions regarding the trademarks, service marks and trade dress used on and in connection with all Collaboration Products. For the avoidance of doubt, the Continuing Party with respect to any Opt-Out Product shall own all right, title and interest in and to all trademarks, trade names, service marks and trade dress specifically developed for and used on or in connection with the relevant Collaboration Product prior to its being an Opt-Out Product and shall be responsible for all decisions regarding the trademarks, service marks and trade dress used on and in connection therewith.

(b) **Party Marks**. Chiron and XOMA shall each retain sole and exclusive ownership of their own respective and independently developed and/or pre-existing trademarks, trade names, service marks and trade dress, regardless of whether such trademarks, trade names, service marks and trade dress are used on or in connection with any Collaboration Product. All advertising and promotional and educational materials in respect of each Collaboration Product in each country (including any Collaboration Product labeling or packaging inserts to the extent permitted by law or required by any Regulatory Authority) will include, if Chiron's name is included, XOMA's name, the size and placement of which shall be comparable. Chiron will use commercially reasonable efforts to provide XOMA with copies of all significant such advertising, promotional and educational materials reasonably in advance of publication.

12.8 Patent Disputes Between the Parties. Notwithstanding any provision of this Agreement to the contrary, any dispute between the Parties involving the validity, enforceability or infringement of the Patent Rights of either Party by the other Party shall be subject to the terms and conditions of Section 15.12 and shall not be subject to any other decision-making provisions hereof.

ARTICLE XIII

REPRESENTATIONS AND WARRANTIES; DISCLAIMER; INDEMNIFICATION

13.1 Representations and Warranties of XOMA. XOMA represents and warrants to Chiron that, as of the Date of this Agreement:

(i) XOMA is a limited liability company duly organized, validly existing and in good standing under the laws of the state of its formation; XOMA has the full legal authority and the legal right to enter into this Agreement; this Agreement has been duly authorized by all necessary corporate action on the part of XOMA,

(ii) this Agreement does not conflict with, violate, or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which XOMA is bound,

(iii) XOMA has not entered into any agreement under which it has granted to any Third Party any license or other rights under the XOMA Background IP, in the Field, except as expressly set forth in **Schedule 13.1** hereto,

(iv) XOMA has the full right and authority to grant to Chiron the licenses and other rights granted to Chiron under this Agreement, and

(v) XOMA has not entered into any agreement under which it has granted to any Third Party any license or other rights under the XOMA Background IP which is in conflict or otherwise inconsistent with the licenses and other rights granted to Chiron under this Agreement.

13.2 Representations and Warranties of Chiron. Chiron represents and warrants to XOMA that, as of the Date of this Agreement:

(i) Chiron is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation; Chiron has the full corporate authority and the legal right to enter into this Agreement; this Agreement has been duly authorized by all necessary corporate action on the part of Chiron,

(ii) this Agreement does not conflict with, violate, or breach or constitute a default or require any consent under, any contractual obligation or court or administrative order by which Chiron is bound,

(iii) Chiron has not entered into any agreement under which it has granted to any Third Party any license or other rights under the Chiron Background IP, in the Field, except as expressly set forth in **Schedule 13.2** hereto,

(iv) Chiron has the full right and authority to grant to XOMA the licenses and other rights granted to XOMA under this Agreement, and

(v) Chiron has not entered into any agreement under which it has granted to any Third Party any license or other rights under the Chiron Back-ground IP which is in conflict or otherwise inconsistent with the licenses and other rights granted to XOMA under this Agreement.

13.3 No Warranty of Validity; Non-Infringement. Nothing in this Agreement shall be construed as (a) a warranty or representation by either Party as to the validity or scope of any Patent Right or (b) a warranty or representation that any product obtained from a Collaboration Target, including without limitation any Collaboration Product will be free from infringement of intellectual property rights held or otherwise controlled by a Third Party.

13.4 No Other Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY INTELLECTUAL PROPERTY LICENSED UNDER THE TERMS OF THIS AGREEMENT, ANY COLLABORATION TARGET OR ANY COLLABORATION PRODUCT, AND FURTHER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF ANY COLLABORATION TARGET OR COLLABORATION PRODUCT SET FORTH IN THIS AGREEMENT WILL NOT INFRINGE ANY THIRD-PARTY RIGHTS.

13.5 Indemnification.

(a) **Indemnification by Chiron**. Chiron will indemnify, defend and hold harmless XOMA, its Affiliates and their respective directors, officers, employees and agents against any and all loss, damage, action, suit, claim, demand, liability or expense, and reasonable attorneys fees and expenses (collectively, "**Losses**") to the extent such Losses arise out of any Third Party claim relating to (i) willful misconduct of Chiron, or its permitted licensees, in connection with the performance of any tasks to be performed by Chiron under this Agreement, (ii) the intentional material breach by Chiron of any of its express representations or warranties in this Agreement or (iii) the intentional material breach by Chiron of any of its covenants or obligations in this Agreement; *provided* that the foregoing indemnification shall not apply to any Loss to the extent such Loss is based on or arises out of the matters described in Section 13.5(b).

(b) **Indemnification by XOMA**. XOMA will indemnify, defend and hold harmless Chiron, its Affiliates and their respective directors, officers, employees and agents against any and all Losses to the extent such Losses arise out of any Third Party claim relating to (i) willful misconduct of XOMA, or its permitted licensees, in connection with the performance of any tasks to be performed by XOMA under this Agreement, (ii) the intentional material breach by XOMA of any of its express representations or warranties in this Agreement or (iii)

the intentional material breach by XOMA of any of its covenants or obligations in this Agreement; *provided* that the foregoing indemnification shall not apply to any Loss to the extent such Loss is based on or arises out of the matters described in Section 13.5(a).

(c) **Environmental**. Notwithstanding any other indemnification obligation in this Agreement, and in addition to any rights the Parties may have under relevant federal, state, or local statutory and common laws, each Party shall indemnify and hold harmless the other Party and its Affiliates from and against any and all Losses which (i) arise under any Environmental Law in connection with performance of tasks pursuant to this Agreement and (ii) are incurred as a result of Environmental Matters, except to the extent attributable to acts or omissions of the other Party or its Affiliates or representatives. "**Environmental Matters**" means:

(i) The operation by such Party, its Affiliates or representatives of any site or facility in a manner that is not in compliance with and is in violation of any Environmental Law.

(ii) Any release of Hazardous Materials into the environment by such Party, its Affiliates or representatives, including any release related to the storage, treatment or disposal of Hazardous Materials at any site or facility operated by such Party, its Affiliates or representatives.

(iii) Any other actual or alleged act or omission relating to the manufacture, distribution, generation, use, handling, storage, treatment, transport or disposal of Hazardous Materials at any site or facility.

(iv) "**Hazardous Materials**" includes any contaminant, pollutant, material, waste, substance or chemical, including without limitation, asbestos, PCB's, petroleum and petroleum products, medical waste and infectious waste, which are regulated or can give rise to liability under any applicable Environmental Law.

(v) "**Environmental Law**" means any law, statute, rule, code, regulation, decree, judgment relating to pollution or protection of the environment or human health (to the extent related to exposure to Hazardous Materials) including, without limitation, those relating to the release or threatened release, or manufacture, use, generation, distribution, transport, handling, storage, treatment or disposal of Hazardous Materials.

(d) **Collaboration Product**. Except in those instances where Sections 13.5(a) and (b) expressly apply, in the event of any Losses to either Party resulting directly or indirectly from the manufacture, use, testing, handling, storage or disposition of a Collaboration Product or the inherent properties of a Collaboration Product (including without limitation product liability claims), the Parties shall share such Losses in accordance with Section 6.2(a).

(e) **General Indemnification Provisions**. In the event that a Party is seeking indemnification under this Section 13.5, it shall inform the other Party of a claim as soon as reasonably practicable after it receives notice of the claim, shall permit the other Party to assume direction and control of the defense of the claim, and shall cooperate as requested by the other Party (at the expense of the other Party) in the defense of the claim. Neither Party shall have the right to settle a claim for which it is seeking indemnification under this Section 13.5, whether the

claim seeks monetary consideration or injunctive relief, without the consent of the other Party (which consent shall not be unreasonably withheld or delayed). For the avoidance of doubt, any Losses paid in accordance with this Section 13.5 shall not be chargeable to the Collaboration.

(f) **Insurance**. Each Party shall obtain and maintain in effect with financially sound and reputable insurers an appropriate insurance policy with respect to its obligations under this Article XIII, to the extent such policy can be obtained and maintained on reasonable commercial terms and if such a policy cannot be so obtained and maintained, the Parties shall meet and confer regarding appropriate alternatives, which may include appropriate reserves in respect of such obligations. At the written request of a Party, the other Party will supply a Certificate of Insurance or evidence of such reserve, reasonably satisfactory to the requesting Party, indicating the terms of coverage.

ARTICLE XIV
TERM; SURVIVAL

14.1 Term. The term of this Agreement shall commence as of the Date of this Agreement and shall remain in full force and effect until the expiration of the last cost or profit sharing, or royalty payment obligation of the Parties pursuant to the terms of this Agreement. The Parties acknowledge that the Initial Agreement governed the Collaboration during that portion of the Exclusivity Period from the Effective Date through the Date of this Agreement.

14.2 Material Breach.

(a) **Notice**. If either Party materially breaches this Agreement, the other Party, at its option, may provide written notice to the Party in breach describing in reasonable detail the nature of the material breach.

(b) **Cure**. In the event that a Party receives written notice from the other Party describing a material breach, such Party shall have an opportunity to cure such material breach during a period of not less than [*] in the case of any breach other than a payment breach, and [*] in the case of any payment breach, such period beginning on the date of receipt of such written notice.

(c) **Buy-Out Right**.

(i) Upon a final determination that (x) a material breach occurred, (y) such material breach was not cured and (z) such material breach has caused or is reasonably likely to cause a material adverse effect on the business or prospects of the Collaboration, the non-breaching Party, at its option and in its sole discretion, may exercise a right to buy-out the entire interest held by the other Party in the Collaboration at fair market value ("**FMV**") by providing written notice thereof to the breaching Party within [*] of such final determination.

(ii) For purposes of this Section 14.2(c), FMV shall be determined as follows:

(A) If the Parties, in good faith, cannot determine FMV within [*] after the notification of the non-breaching Party's exercise of its right to buy the entire interest in the Collaboration held by the breaching Party, each Party shall

designate a reputable investment banking or appraisal firm of its choice (which in the case of an investment bank shall not be the regular banker of the Party) (the "**Appraiser**"), who will be asked to provide its best, single number estimate of the FMV, using a common set of assumptions provided by the Parties, or if the Parties cannot agree, by the Appraisers. Each Party shall use its best efforts to cause its designated Appraiser to provide the evaluation within [*].

(B) If one valuation exceeds the other by [*] percent ([*]%) or less, the FMV shall be the average of the two valuations. If one evaluation exceeds the other by more than [*] percent ([*]%), the Parties (or, if the Parties cannot agree, the Appraisers) shall designate a third Appraiser to prepare a valuation without access to the earlier valuations. Each Party shall use its best efforts to enable the third Appraiser to provide the evaluation within [*]. If the third valuation falls between the prior two valuations, the three valuations shall be averaged to determine the FMV. If the third valuation falls outside the range of the prior two valuations, the valuation closest to the median of the three valuations shall be the FMV. Each Party shall bear the costs and expenses of its own Appraiser as well as [*] percent ([*]%) of the costs and expenses of the third Appraiser, if necessary.

(iii) The non-breaching Party shall pay to the breaching Party the FMV of the breaching Party's interest in the Collaboration in cash within [*] after the date of the determination of such FMV. If the non-breaching Party does not make such payment within such [*], such right hereunder shall expire unexercised.

(iv) For commercial Collaboration Products, upon a final determination that a material breach occurred and that such material breach was not cured, the breaching Party shall retain its profit interest in each and every such Collaboration Product pursuant to Section 6.2, subject in the case of XOMA to adjustment in accordance with Section 6.3 for achievement of each and every event prior to the date of the final determination that a material breach occurred and that such material breach was not cured, together with rights applicable to such Collaboration Products pursuant to Article X, but shall have no other rights under the terms of this Agreement.

14.3 Opt-Out Royalty Term. The royalty obligations under Sections 3.9(e)(i) and 3.9(e)(ii) shall terminate with respect to each Opt-Out Product with respect to an Opt-Out Target on the later of (i) the expiration date of the last to expire of any issued Collaboration Patent Rights or Patent Rights of the Opt-Out Party that includes at least one Valid Claim covering the sale of such Opt-Out Product on a country-by-country basis or (ii) [*] years after first commercial sale of such Opt-Out Product on a country by country basis; *provided*, *however*, in any event, royalty obligations under Sections 3.9(e)(i) and 3.9(e)(ii) shall be reduced by [*]%, on a country-by-country basis, with respect to each Opt-Out Product with respect to an Opt-Out Target in the event clause (i) is satisfied with respect to such country.

14.4 Bankruptcy. Either Party may, in addition to any other remedies available to it by law or in equity, terminate this Agreement, in whole or in part as the terminating Party may determine, by written notice to the other Party in the event the other Party shall have become bankrupt, or shall have made an assignment for the benefit of its creditors or there shall

have been appointed a trustee or receiver of the other Party or for all or a substantial part of its property or any case or proceeding shall have been commenced or other action taken by or against the other Party in bankruptcy or seeking reorganization, liquidation, dissolution, winding-up, arrangement, composition or readjustment of its debts or any other relief under any bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect and any such event shall have continued for [*] undismissed, unbonded and undischarged. All rights and licenses granted under this Agreement by one Party to the other Party are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the Bankruptcy Code, licenses of rights to "intellectual property" as defined under Section 101(56) of the Bankruptcy Code. The Parties agree that the licensing Party under this Agreement shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code in the event of a bankruptcy by the other Party. The Parties further agree that in the event of the commencement of a bankruptcy proceeding by or against one Party under the Bankruptcy Code, the other Party shall be entitled to complete access to any such intellectual property pertaining to the rights granted in the licenses hereunder of the Party by or against whom a bankruptcy proceeding has been commenced and all embodiments of such intellectual property.

14.5 Survival. The rights and obligations of the Parties pursuant to Articles I, XI, XIII, and XV, Sections 7.1, 9.5, 12.1, 12.7 and 14.5, and, for a period not to exceed six months after the Exclusivity Period, Sections 9.1, 9.2 and 9.3, shall survive and continue beyond expiration or earlier termination of this Agreement. In addition, in the event of expiration of this Agreement, but not earlier termination, the rights and obligations of the Parties under the licenses granted pursuant to Article VIII with respect to Know-How shall survive and continue beyond expiration of this Agreement as non-exclusive licenses.

ARTICLE XV

MISCELLANEOUS

15.1 Further Assurances. At any time or from time to time on and after the date of this Agreement, each of the Parties shall at the request of the other Party (i) deliver to such other Party such records, data or other documents consistent with the provisions of this Agreement, (ii) execute, and deliver or cause to be delivered, all such assignments, consents, documents or further instruments of transfer or license, and (iii) take or cause to be taken all such other actions, as such other Party may reasonably deem necessary or desirable in order to obtain the full benefits of this Agreement and the transactions contemplated hereby.

15.2 Change of Control.

(a) Upon a change of control of XOMA Ltd., a Bermuda company and sole shareholder of XOMA ("**XOMA Parent**"), Chiron shall have the right to buy the entire interest in the Collaboration held by XOMA (subject to Section 15.2(b) below) at a purchase price equal to the FMV of such interest as of the date of the change of control of XOMA Parent. Such FMV shall be determined in accordance with the procedure set forth in Section 15.2(c) (and taking into account Section 15.2(b)). For purposes of this Section 15.2(a), the term "**change of control**" shall mean the closing of (i) any consolidation or merger of XOMA Parent with or into any other corporation or entity, (ii) a sale of all or substantially all of the assets of XOMA Parent

(including, without limitation, stock in its subsidiaries), (iii) a sale to a Third Party of XOMA by XOMA Parent, (iv) any transaction by which a Third Party or group (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**")) becomes the beneficial owner (as defined in Rule 13d-3 and 13d-5 of the Exchange Act) of fifty percent (50%) or more of the voting power of XOMA Parent or (v) any transaction or series of transactions having similar effect as the foregoing; *provided* that, in each of cases (i), (iv) and (v), as a result of such consolidation, merger, sale or other transaction(s), the shareholders of XOMA Parent immediately prior to the closing thereof do not own immediately after such closing at least fifty percent (50%) of the voting power of XOMA Parent, or the surviving entity, or the parent of the surviving entity. Not later than the date of any public announcement that XOMA Parent may undergo, or anticipates undergoing, a change of control, XOMA shall provide written notice thereof to Chiron including in such written notice the identity of the party or parties in the consolidation, merger, sale or other transaction(s) that, if completed, would constitute a change of control of XOMA Parent. In addition, after delivery of such written notice to Chiron, XOMA shall provide assistance to Chiron, as requested and reasonably required by Chiron, to permit Chiron to evaluate whether to exercise its right under this Section 15.2(a). After delivery of such written notice from XOMA, Chiron shall have [*] to provide notice of its intent to exercise its right to buy the entire interest in the Collaboration held by XOMA, subject to determination of the FMV of the interest in the Collaboration held by XOMA, by providing written notice thereof to XOMA. Chiron may consummate the acquisition of the entire interest in the Collaboration held by XOMA after Chiron's receipt of the written notice from XOMA pursuant to this Section 15.2(a) within [*] after the date of determination of the FMV of the interest in the Collaboration held by XOMA or [*] after the effective date of such change of control, whichever is later.

(b) In the event that, as of the date of the change of control of XOMA, the Parties have achieved a first commercial sale, or have initiated Phase III Clinical Trials, of a Collaboration Product, with respect to that Collaboration Product only, XOMA, notwithstanding Chiron's rights pursuant to Section 15.2(a) above, shall have the right to retain its profit interest in such Collaboration Product pursuant to Section 6.2, subject to adjustment in accordance with Section 6.3 for achievement of each milestone prior to the date of the change of control of XOMA, together with rights applicable to such Collaboration Products pursuant to Article VIII, and all its other rights under the terms of this Agreement, including for example an option to field sales representatives or a right to receive information via any transparency provision in this Agreement (other than financial audit rights in connection with Section any continuing payments required by this Section 15.2(b)) shall terminate.

(c) For purposes of Section 15.2(a), FMV shall be determined as follows:

(i) If the Parties, in good faith, cannot determine FMV within [*] after the notification of Chiron's exercise of its right to buy the entire interest in the Collaboration held by XOMA, each Party shall designate an Appraiser, who will be asked to provide its best, single number estimate of the FMV, using a common set of assumptions provided by the Parties, or if the Parties cannot agree, by the Appraisers. Each Party shall use its commercially reasonable efforts to cause its designated Appraiser to provide the evaluation within [*].

(ii) If one valuation exceeds the other by [*] percent ([*]%) or less, the FMV shall be the average of the two valuations. If one evaluation exceeds the other by more than [*] percent ([*]%), the Parties (or, if the Parties cannot agree, the Appraisers) shall designate a third Appraiser to prepare a valuation without access to the earlier valuations. Each Party shall use its commercially reasonable efforts to enable the third Appraiser to provide the evaluation within [*]. If the third valuation falls between the prior two valuations, the three valuations shall be averaged to determine the FMV. If the third valuation falls outside the range of the prior two valuations, the valuation closest to the median of the three valuations shall be the FMV. Each Party shall bear the costs and expenses of its own Appraiser as well as [*] percent ([*]%) of the costs and expenses of the third Appraiser, if necessary.

(iii) To exercise its right under this Section 15.2, Chiron shall pay XOMA the FMV of XOMA's interest in the Collaboration in cash within [*] after the date of determination of such FMV. If Chiron, at Chiron's sole option, does not make such payment within [*] after the date of the determination of such FMV, such right hereunder shall expire unexercised.

(d) In the event Chiron consummates the acquisition of the entire interest in the Collaboration held by XOMA pursuant to this Section 15.2, Sections 3.9(f)(i), 3.9(f)(ii), 8.2(a) and (c) shall survive any such acquisition by Chiron of XOMA's interest in the Collaboration as if XOMA is the Opting-Out Party and Chiron is the Continuing Party with respect to all Collaboration Targets and Collaboration Products, and in the event that then-current R&D Plans and Budgets provide that XOMA will manufacture any Collaboration Product, XOMA will contract manufacture each such product at cost for Chiron until such time as Chiron is able to establish alternative manufacturing but in no event for more than [*]. During such [*] period, XOMA will provide reasonable assistance to Chiron or to any third party manufacturer as Chiron may designate in its sole discretion to transfer all requisite technology, skills and know-how relating to manufacturing of the applicable Collaboration Product(s) to Chiron and/or such third party manufacturer to ensure a smooth and orderly transition of manufacturing capability at Chiron's expense. For clarification, in the event of such acquisition by Chiron, Chiron shall have no royalty obligation to XOMA under Section 3.9(e).

15.3 No Right to Use Names. Except as otherwise provided herein or as required by applicable law, regulation or court order, no right, express or implied, is granted by this Agreement to use in any manner the names "Chiron," "XOMA" or any other trade name or trademark of a Party or its Affiliates.

15.4 Covenants.

(a) XOMA covenants that (i) XOMA will conduct all research and development activities allocated to it with respect to Collaboration Targets and Collaboration Products in accordance with all applicable laws, rules and regulations; (ii) all Collaboration Products manufactured by XOMA and used for the Collaboration shall meet the specifications for such Collaboration Products, and shall be manufactured in accordance with all applicable laws, rules and regulations; and (iii) XOMA will conduct all its obligations under this Agreement in accordance with all applicable laws, rules and regulations.

(b) Chiron covenants that (i) Chiron will conduct all research and development activities allocated to it with respect to Collaboration Targets and Collaboration Products in accordance with all applicable laws, rules and regulations; (ii) all Collaboration Products manufactured by Chiron and used for the Collaboration shall meet the specifications for such Collaboration Products, and shall be manufactured in accordance with all applicable laws, rules and regulations; and (iii) Chiron will conduct all its obligations under this Agreement in compliance with all applicable laws, rules and regulations.

15.5 Notices. All consents, notices or reports required or permitted to be given or made under this Agreement by one of the Parties to the other shall be in writing and addressed to such other Party at its address indicated below, or to such other address as the addressee shall have last furnished in writing to the addressor, and shall be effective upon receipt by the addressee.

If to XOMA, addressed to:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: General Counsel
Facsimile: 510-649-7571

With a copy to:

XOMA (US) LLC
2910 Seventh Street
Berkeley, California 94710
Attention: Vice President, Business Development

And:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
Attention: Geoffrey E. Liebmann

If to Chiron, addressed to:

CHIRON CORPORATION
4560 Horton Street
Emeryville, CA 94608
Attention: President, BioPharmaceuticals
Facsimile: 510-923-3832

With a copy to:

CHIRON CORPORATION
4560 Horton Street
Emeryville, CA 94608
Attention: General Counsel
Facsimile: 510-654-5360

15.6 Waiver. The waiver by a Party of any right hereunder, or of any failure to perform or breach by the other Party hereunder, shall not be deemed a waiver of any other right hereunder or of any other breach or failure by the other Party hereunder whether of a similar nature or otherwise.

15.7 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL A PARTY, ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, WHETHER BASED UPON A CLAIM OR ACTION OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, OR OTHERWISE ARISING OUT OF THIS AGREEMENT, REGARDLESS OF ANY NOTICE OF SUCH DAMAGES.

15.8 Entire Agreement; Amendment. This Agreement, including all exhibits and schedules attached hereto (which exhibits and schedules are hereby incorporated herein by this reference), sets forth all the covenants, promises, agreements, warranties, representations, conditions and understandings between the Parties with respect to the subject matter hereof and supersedes and terminates all prior agreements, representations and understandings between the Parties, including, but not limited to, the Initial Agreement but excluding the Common Interest and Joint Litigation Agreement between the Parties effective as of the Effective Date. No alteration, amendment, change or addition to this Agreement shall be binding upon the Parties hereto unless reduced to writing and signed by the respective authorized officers of the Parties.

15.9 Severability. If any provision of this Agreement is found by a court to be void, invalid or unenforceable, the same shall either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement. In the event a provision of this Agreement is held invalid, illegal or otherwise unenforceable, the Parties shall substitute a permissible provision intended to effectuate the business arrangements reflected in this Agreement.

15.10 No Joint Venture or Partnership; Independent Contractors. Nothing contained herein shall establish, and it is not the intention of the Parties to establish, a joint venture or a partnership. The relationship of Chiron and XOMA under the terms of this Agreement shall be that of independent contractors, and nothing contained in this Agreement shall be construed to (a) give either Party the power to direct or control the day-to-day activities of the other Party, (b) create an employment, agency, joint venture or partnership relationship between the Parties or any of their agents or employees, or (c) allow either Party to create or assume any obligation on behalf of the other Party for any purpose whatsoever.

15.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to principles of conflict of laws thereof.

15.12 Enforcement. Any action or proceeding brought by either Party seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against any of the Parties in the courts of the State of California and, in particular with respect to intellectual property matters (including Patent Rights and Know-How), shall be submitted exclusively to the United States District Court for the Northern District in the State of California. Each Party (i) hereby irrevocably submits to the jurisdiction of the state courts of the State of California and to the jurisdiction of the United States District Court for the Northern District in the State of California, for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement or the subject matter hereof brought by any Party or its successors or assigns, (ii) hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives and agrees not to seek any review by any court of any other jurisdiction that may be called upon to grant an enforcement of the judgment of any such California state or federal court.

15.13 Headings. All headings are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

15.14 Commercially Reasonable Efforts. In each case in this Agreement in which a Party is required to use a specific degree of effort to perform a specified action (other than under Article XIII), the degree of effort required shall be deemed limited to what is commercially reasonable under the applicable facts and circumstances.

15.15 Construction. Except where the context otherwise requires, wherever used, the singular shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders. The term “including” as used herein shall mean including, without limiting the generality of any description preceding such term. The language of this Agreement shall be deemed to be language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party hereto.

15.16 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

15.17 Performance by Affiliates. Each of XOMA and Chiron acknowledges that obligations under this Agreement may be performed by Affiliates of XOMA and Chiron. In the event of any dispute arising from the performance of this Agreement by an Affiliate, or the alleged failure of an Affiliate to comply with the conditions and obligations of this Agreement, the Party seeking to resolve such dispute may do so directly with the other Party, without any

obligation to first pursue an action against, or recovery from, the Affiliate which is alleged to have caused a breach of this Agreement.

15.18 Assignment. Neither Party may assign or transfer this Agreement without the prior written consent of the other, except a Party may make such an assignment without the other Party's consent to an Affiliate of such Party for so long as such assignee is an Affiliate of such Party and covered by Section 15.17 or to a successor to all or substantially all of the related business of such Party, whether in a merger, sale of stock, sale of assets or other transaction; *provided* that, with respect to XOMA, any such assignment to a successor (other than an Affiliate) of all or substantially all of such related business shall be deemed to be a "change of control" for purposes of Section 15.2. Any permitted successor or assignee of rights and/or obligations hereunder shall, in a 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 shall be null and void.

15.19 No Access to Human Engineering™ Data Base. Notwithstanding the provisions of any licenses or other rights granted herein in relation to the Human Engineering™ Technology, Chiron acknowledges that nothing herein shall be deemed to grant it, nor shall it have, any access or right of access to the data base relating to the Human Engineering™ Technology in any circumstance contemplated hereby; *provided* that, in the event XOMA changes its policy such that it intends to begin making such data base available to Third Parties, Chiron will have access to such data base.

15.20 Consents; Agreements. In each case in this Agreement requiring the approval or consent of either or both of the Parties, the provisions hereof granting Chiron a right to cast the deciding vote expressly shall not apply to the subject matter of such approval or consent.

IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate originals by their proper officers as of the date and year first above written.

Date: May 26, 2005

XOMA (US) LLC

By: /s/ JOHN L. COSTELLO
Name: John L. Costello
Title: Chairman of the Board, President and Chief Executive Officer

Date: May 26, 2005

CHIRON CORPORATION

By: /s/ CRAIG A. WHEELER
Name: Craig A. Wheeler
Title: President, Chiron BioPharmaceuticals

Schedule 1.15

[*]

Schedule 1.103

[*]

Schedule 3.2(d)

[*]

Schedule 3.3(b)

Collaboration Targets

CD40

[*]

Schedule 3.5(a)

[*]

Schedule 3.9(g)

[*]

Schedule 5.1(d)(i)

Binding Baseball-Style Arbitration Procedures

(i) The party invoking baseball style arbitration will so notify the other party in writing (the "**Arbitration Notice**"). The Arbitration Notice will contain a list of all issues the party proposes to submit to arbitration, as well as that party's "final best offer" on each of those issues. Within twenty days of receipt of any such notice, the party receiving the notice will promptly notify the initiating party of any additional issues which the receiving party intends to include in the arbitration, as well as the receiving party's "final best offer" on such additional issues. The issues listed in the Arbitration Notice and in such reply will be the only issues submitted to arbitration.

(ii) The parties will negotiate in good faith to agree on the Neutral. If the parties do not agree on the Neutral within twenty days of the date of the Arbitration Notice, each party will, within twenty-five days of the Arbitration Notice, designate an independent party who otherwise meets the qualifications for the Neutral, and, no later than forty days from the date of the Arbitration Notice, those two designees will select the Neutral. The selection of the Neutral by the two independent designees will be binding on the parties.

(iii) No later than 45 days from the date of the Arbitration Notice, the parties will prepare and submit to the Neutral in writing their respective positions as follows: each party will submit to the Neutral a phase I/II R&D plan and budget which contains that party's "final best offer" on each open issue, as well as a Memorandum of Points and Understandings summarizing the party's position with respect to each such issue.

(iv) The Neutral will be instructed that such plan and budget must be determined on a portfolio basis (i.e., with reference to all other Collaboration projects) and must include sufficient resources to expeditiously advance the target and corresponding Antibody Products and must be consistent with the letter and spirit of this Agreement. Subject to the foregoing, the Neutral will conduct a "baseball style" arbitration, pursuant to which the Neutral will select the single plan and budget, which, in the determination of the Neutral, most closely conforms to the requirements of this Agreement. Although the determination will be made based on the entire plan and budget taken as a whole, rather than "issue by issue", the Neutral will have a modified "line item veto", pursuant to which he or she shall substitute one or more provisions from the nonprevailing party's submission in lieu of the comparable provision in the prevailing party's submission and/or entirely delete provisions if, in the judgment of the Neutral, the provision is inconsistent with the letter or spirit of this Agreement or the definitive agreement, as appropriate, the failure to make such substitution or deletion would be manifestly unreasonable.

(v) The parties will instruct the Neutral to complete his or her determination no later than 75 days from the date of the Arbitration Notice.

(vi) At any time prior to the determination, either party may accept the other party's position on any unresolved issue and in such event such position will be deemed part of the final document and no longer subject to arbitration.

Schedule 6.4

Secured Note Agreement

Schedule 13.1

[*]

Schedule 13.2

[*]

Exhibit 10.3

[*] indicates that a confidential portion of the text of this agreement has been omitted. The non-public information has been filed separately with the Securities and Exchange Commission.

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, ASSIGNED OR OTHERWISE TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER SAID ACT COVERING THE TRANSFER, OR AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS UNDER SAID ACT.

Berkeley, California
May 26, 2005

$50,000,000

XOMA (US) LLC

SECURED NOTE AGREEMENT

WHEREAS, XOMA (US) LLC, a Delaware limited liability company having an office at 2910 Seventh Street, Berkeley, California 94710 (the "Company"), and CHIRON CORPORATION, a Delaware corporation having its principal office at 4560 Horton Street, Emeryville, California 94080 (the "Lender"), desire to further the collaboration arrangements embodied in that certain Research, Development and Commercialization Agreement, dated as of May 26, 2005, between the Company and the Lender (the "Collaboration Agreement");

WHEREAS, the Lender has agreed to make semi-annual loans to the Company to fund up to seventy-five percent (75%) of the Company's Research and Development Costs and Commercialization Costs (as each such term is defined in the Collaboration Agreement), all such loans (to the extent not repaid) to be evidenced by this Secured Note Agreement which shall, together with that certain Security Agreement (the "Security Agreement") concurrently being entered into as of the date hereof, between the Company and Lender, supersede any prior agreement with respect to the subject matter hereof (this "Note");

WHEREAS, the Company has agreed to repay any such loans in accordance with the terms of this Note; and

WHEREAS, in connection with the Collaboration Agreement, the Company and the Lender desire to set forth in this Note the terms and conditions on which the Company may borrow from and repay to the Lender loans (the "Loans") in an aggregate principal amount (including capitalized interest as provided herein) not to exceed FIFTY MILLION DOLLARS ($50,000,000) (the "Commitment Amount") to be lent to the Company by the Lender.

NOW, THEREFORE, FOR VALUE RECEIVED, the Company promises to repay to the order of the Lender the outstanding principal amount of Loans evidenced by this Note together with interest thereon, all as set forth below.

1. Definitions. In addition to definitions contained in the Recitals to this Note, as used in this Note, the following terms shall have the meanings set forth below:

"Advance Date" means each June 20 and December 20, beginning with December 20, 2004 and ending with June 20, 2011 provided, that the Company has designated such date an Advance Date by exercising its option to borrow on such date in accordance with Section 2(b); provided, further, that if any such date is not a business day, the applicable Advance Date shall be the immediately following business day.

"Available Amount" means, with respect to a particular Advance Date, 75% of either (i) the Research and Development Costs to be borne by the Company according to the R&D Plan and Budget in effect pursuant to Section 3.5 of the Collaboration Agreement for the next succeeding two (2) calendar quarters following such Advance Date or (ii) the Commercialization costs to be borne by the Company according to the commercialization plan and budget in effect pursuant to Section 4.3(c) of the Collaboration Agreement for the next succeeding two (2) calendar quarters following such Advance Date, whichever is applicable; provided, that the applicable Available Amount shall be adjusted to the extent of any estimated over- or under-borrowing with respect to the immediately preceding Loan.

"Borrowing Notice Date" means the tenth (10^{th}) business day prior to each June 20 and December 20, beginning with December 20, 2004 and ending with June 20, 2011.

"Capital Lease Obligations" means the obligations of the Company under leases of property which are capitalized on the balance sheet of the Company in accordance with GAAP that are shown as a liability on a balance sheet of the Company prepared in accordance with GAAP.

"Collaboration" has the meaning given such term in the Collaboration Agreement.

"Collateral" has the meaning given such term in the Security Agreement.

"Commercialization Costs" has the meaning given such term in the Collaboration Agreement.

"Commitment Period" means the period from the date hereof until the earlier of (i) June 20, 2011, and (ii) such time as an Event of Default has occurred with respect to XOMA.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time.

"Indebtedness" means any outstanding indebtedness evidenced by this Note.

"Insolvency Event" means any of the following events: (i) the Company shall have had an order for relief entered with respect to it or shall commence a voluntary case under any applicable bankruptcy, insolvency or similar law, or shall consent to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case, or shall consent to the appointment of or taking possession by a receiver, trustee or other custodian for all or a substantial part of its property; or the Company shall make any assignment for the

benefit of creditors; (ii) the Company shall be unable to pay its debts as such debts become due; (iii) a court of competent jurisdiction shall enter a decree or order for relief in respect of the Company in an involuntary case under applicable bankruptcy, insolvency or similar law, which decree or order is not stayed; or (iv) an involuntary case shall be commenced against the Company under applicable bankruptcy, insolvency or similar law; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over the Company or any of its property, shall have been entered; or there shall have occurred the involuntary appointment of an interim receiver, trustee or other custodian of the Company for all or a substantial part of its property; or a warrant of attachment, execution or similar process shall have been issued against any substantial part of the property of the Company, and such event described in clauses (i) through (iv) shall continue for 60 days without having been dismissed, bonded or discharged.

"Interest Period" means, with respect to any Loan and subject to the custom and practice of the [*], a period beginning on the date such Loan is made and on each June 20 and December 20 thereafter and ending on the earlier of the next June 19, December 19 or the scheduled maturity date of such Loan.

"[*] Rate" means, [*].

"[*] Rate Determination Date" means the first day of each Interest Period, it being understood that, in accordance with the custom and practice of the [*], the [*] Rate effective as of the [*] Rate Determination Date may be based on calculations made as a result of market conditions and quotations made two [*] business days prior to the [*] Rate Determination Date.

"Permitted Liens" means the following types of liens:

(i) liens for taxes, assessments or governmental charges or claims either (a) not delinquent or (b) contested in good faith by appropriate proceedings, if a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

(ii) statutory liens of landlords and liens of carriers, warehousemen, mechanics, suppliers, materialmen, repairmen and other liens imposed by law incurred in the ordinary course of business for sums not yet delinquent or being contested in good faith, if a reserve or other appropriate provision, if any, as shall be required by GAAP shall have been made in respect thereof;

(iii) liens incurred or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, including any lien securing letters of credit issued in the ordinary course of business consistent with past practice in connection therewith, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations (exclusive of obligations for the payment of borrowed money);

(iv) judgment liens not giving rise to an Event of Default so long as such lien is adequately bonded and any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceedings may be initiated shall not have expired;

(v) easements, rights-of-way, zoning restrictions and other similar charges or encumbrances in respect of real property not interfering in any material respect with the ordinary conduct of the business of the Company;

(vi) liens securing reimbursement obligations with respect to commercial letters of credit which encumber documents and other property relating to such letters of credit and products and proceeds thereof;

(vii) liens encumbering deposits made to secure obligations arising from statutory, regulatory, contractual, or warranty requirements of the Company, including rights of offset and set-off; and

(viii) liens existing as of the date hereof to the extent and in the manner such liens are in effect on the date hereof.

"Research and Development Costs" has the meaning given such term in the Collaboration Agreement.

"R&D Plans and Budgets" has the meaning given such term in the Collaboration Agreement.

"Tranche" means the designation given a Loan pursuant to Section 2(d) and "Tranches" means two or more of such designations collectively.

2. Principal.

(a) Commitment. In accordance with, and subject to the terms and conditions of, this Note and the Security Agreement, the Lender agrees during the Commitment Period to make Loans to the Company in an aggregate principal amount not to exceed the Commitment Amount. This is not a revolving loan arrangement. Any Loans that are made hereunder and any interest capitalized pursuant to Section 3 permanently reduce the portion of the Commitment Amount available for later Loans; and any Loans repaid hereunder may not be reborrowed.

(b) Borrowing and Funding Procedures. On or prior to each Borrowing Notice Date, the Company may elect to borrow from the Lender hereunder by delivering a written notice to that effect to the Lender, indicating the portion of the Available Amount that it desires to borrow on the next succeeding Advance Date. Subject to satisfaction or waiver of the conditions referred to Section 2(c) below, the Lender shall make a Loan to the Company on each Advance Date in the amount set forth in the applicable notice of borrowing. The Lender and the Company shall meet not later than each June 13 and December 13 to review the estimated spending by the parties in the then-current borrowing period in comparison to the applicable Loan, to determine any adjustments to be applied to the next Loan. Each time a Loan is made

hereunder, the Company shall be deemed to have given the representations and warranties set forth in the Security Agreement and in Exhibit A hereto.

Each Loan shall be made by wire transfer of immediately available funds to an account in the United States designated by the Company denominated in the currency of the United States of America.

(c) Conditions to Loans. The Lender's obligation to make any Loan to the Company on any Advance Date is subject to the condition that no Event of Default or event which with the giving of notice or the passage of time would become an Event of Default shall have occurred and be continuing and to the fulfillment on or prior to the date such Loan is to be made of the following conditions (and by requesting or accepting a Loan, the Company shall be deemed to have represented to the Lender that such conditions have been satisfied):

(i) such Loan shall be legally permitted by all laws and regulations to which the Company is subject;

(ii) each of the representations and warranties of the Company set forth in Exhibit A to this Note and Section 4 of the Security Agreement shall be true and correct as of the date such Loan is to be made as if made on and as of such date;

(iii) such Loan will not occur within the period during which the Company is not permitted to borrow, as described in the last sentence of Section 4(d) below;

(iv) the Company shall have performed and complied in all material respects with all agreements, obligations and conditions contained in this Note, the Security Agreement and the Collaboration Agreement that are required to be performed or complied with by it on or prior to the making of such Loan; and

(v) the Company shall have obtained all consents (including all governmental and regulatory consents, approvals or authorizations required in connection with such Loan), permits and waivers necessary or required in connection with such Loan.

(d) Tranches. The principal amount of each Loan shall be recorded by the Lender and endorsed by the Lender and the Company on Exhibit B attached hereto, which is hereby made a part of this Note. Each such Loan shall be treated as a separate Loan hereunder, and, as such, shall be designated a separate "Tranche" hereunder. The first Loan, to be made as contemplated by Section 2(b) above, is hereby designated "Tranche A". Each subsequent Loan made hereunder, as contemplated by Section 2(b) above, shall be similarly designated with consecutive letter designations, such as "Tranche B", "Tranche C", etc., and the applicable designation shall be recorded by the Lender and endorsed by the Lender and the Company on Exhibit B attached hereto at the time any such Loan is made. Notwithstanding the foregoing, any failure of the Lender to make any notation on Exhibit B shall not affect the obligation of the Company to repay Loans actually made with interest in accordance with this Note.

(e) Maturity Date. Unless earlier accelerated by reason of the occurrence of an Event of Default (as provided in Section 5 below), any unpaid principal amount of any Loan

owed by the Company to the Lender, together with accrued and unpaid interest thereon, shall be due and payable in full on the tenth (10th) anniversary of the Advance Date on which the first Loan was made.

(f) Use of Proceeds. The proceeds of the Loans shall be used by the Company solely to finance the Company's share of expenses of the Collaboration.

3. Interest. Interest on the unpaid balance of the principal amount of each Loan hereunder shall accrue at a rate per annum equal to the applicable [*] (calculated on the basis of a year of 360 days) from the date disbursed to but not including the date repaid and shall be due and payable on the last day of each Interest Period and on the date each Loan is repaid or matures; provided that any such due and unpaid interest may, at the election of the Company (or shall, if the Company does not notify Lender of such election), in lieu of cash payment, be added to the principal amount of this Note on the date due (thereby reducing portion of the Commitment Amount available for later Loans). If on the last day of any Interest Period the Company's cumulative outstanding principal (including capitalized interest) exceeds (i) the Commitment Amount minus (ii) the principal amount of any Loans that have been repaid, interest will then be payable in cash at the end of such Interest Period to the extent of such excess.

4. Payment.

(a) Form of Payment. The principal amount of and accrued interest on each Loan hereunder when due or otherwise paid or payable hereunder shall be payable in cash denominated in the currency of the United States of America.

(b) Method, Application. Payments of principal and accrued interest shall be made at the address of the Lender set forth in the Recitals to this Agreement, or at such other place as the Lender shall have notified the Company in writing at least five (5) business days before such payment is due. Unless an Event of Default shall have occurred, all payments in respect of any Loan shall be applied first to accrued and unpaid interest thereon, and thereafter to the unpaid principal amount thereof. After the occurrence of an Event of Default, payments shall be applied as determined by the Lender in its discretion.

(c) Recordation; Return of Note. All payments of interest and principal in respect of each Loan (or portion thereof) hereunder shall be recorded by the Lender and endorsed by the Lender and the Company on Exhibit B. Upon final payment in full of all principal of and interest on this Note and each Loan hereunder, and termination of any commitment of the Lender to make Loans hereunder, the Lender shall return this Note to the Company for cancellation.

(d) Optional Prepayments. This Note and any Loan (or portion thereof) hereunder may be prepaid by the Company, at any time and from time to time without penalty upon ninety (90) days prior written notice to the Lender, in whole or in part, in the manner prescribed for repayment in this Section 4 (which prepayment shall be accompanied by interest on the amount so prepaid). In the event of any prepayment of less than all of the amounts outstanding under this Note, the Company may designate the Loan or Loans to which such

payment shall apply. In the event of any optional prepayment of all of the Loans, the Company may not borrow hereunder until nine (9) months after such prepayment.

(e) Mandatory Prepayment. The Company shall use 25% of its share of the Pre-Tax Profits and royalties under the Collaboration Agreement received by it to repay the Loans, in the manner prescribed for repayment in this Section 4, within five (5) business days of receipt of such proceeds; provided that during an Event of Default, Lender may apply amounts of such Pre-Tax Profits and royalties payable to the Company to such prepayment without first remitting such amount to the Company. In the event of any prepayment of less than all of the amounts outstanding under this Note, the Company may designate the Loan or Loans to which such payment shall apply.

(f) Full Recourse. For the avoidance of doubt, the obligations of the Company represented by this Note shall be full recourse to the Company, and the Lender's recourse in satisfaction of the Indebtedness shall not be limited to the Collateral.

5. Events of Default.

(a) It shall constitute an "Event of Default" under this Note if (i) the Company materially breaches the Collaboration Agreement, this Note or the Security Agreement and such breach continues for a period of sixty (60) days after the Lender has provided written notice of such breach to the Company; or (ii) an Insolvency Event occurs; or (iii) any representation or warranty of the Company made in this Note, the Security Agreement or the Collaboration Agreement shall be materially inaccurate or untrue when made.

(b) Automatically upon the occurrence of an Insolvency Event and, at the option of the Lender, upon the occurrence of any other Event of Default (so long as such Event of Default shall be continuing on the date the Lender exercises such option), all principal, interest and other amounts payable by the Company to the Lender hereunder shall be immediately due and payable, the commitment of the Lender to make Loans in accordance with Section 2 above shall terminate, and the Lender may exercise such rights and remedies in respect thereof and the Collateral as may be provided in this Note, in the Security Agreement, and as are permitted by law or equity.

6. Negative Covenant. The Company shall not grant a security interest in any of its assets to any third party, unless the Indebtedness is secured equally and ratably in respect of such assets, other than (a) liens granted to a third party in connection with purely financial transactions (including, without limitation, a commercial bank line of credit, a mortgage to finance acquisition of real property, purchase money debt and Capital Lease Obligations), (b) liens granted to collaboration or development partners of the Company or its affiliates in connection with co-funded research and development activities; *provided* any such lien is limited to the Company's interest in products developed in such collaboration, and (c) Permitted Liens.

7. Lost Documents. Upon receipt by the Company of reasonable evidence satisfactory to it of the loss, theft, destruction or mutilation of this Note, and indemnity satisfactory to the Company (in the case of loss, theft or destruction) or surrender and

cancellation of the Note (in the case of mutilation), the Company will make and deliver to the Lender a new Note of like tenor and unpaid principal amount and dated as of the date to which interest has been paid on the unpaid principal balance hereunder.

8. Notices. All notices and other communications required or appropriate to be given hereunder shall be in writing and shall be delivered by hand or mailed by certified mail, return receipt requested, or sent by facsimile (in which case a confirming copy shall also be sent by certified mail or courier), to the following respective addresses or to such other addresses as may be specified in any notice delivered or mailed as above provided:

(a) If to the Lender, to:

Chiron Corporation
4560 Horton Street
Emeryville, CA 94608
Facsimile: (510) 923-3823
Attention: Chief Financial Officer, with a copy to the General Counsel

(b) If to the Company, to:

XOMA (US) LLC
2910 7th Street
Berkeley, CA 94710
Facsimile: (510) 649-7571
Attention: General Counsel, with a copy to Vice President, Finance & Chief Financial Officer

Any notice or other communication delivered by hand or mail shall be deemed to have been delivered on the date on which such notice or communication is delivered by hand, or in the case of certified mail deposited with the appropriate postal authorities on the date when such notice of communication is actually received, and in any other case shall be deemed to have been delivered on the date on which such notice or communication is actually received.

9. Amendments. No provision of this Note may be waived, changed or modified, or the discharge thereof acknowledged orally, but only by an agreement in writing signed by the party against which the enforcement of any waiver, change, modification or discharge is sought.

10. Assignment.

(a) Except as set forth in this Section 10, none of the rights or obligations of either party hereto may be assigned or transferred without the prior written consent of the other party hereto; provided that the Lender may assign its rights and obligations hereunder to any Affiliate (as such term is defined in the Collaboration Agreement) of the Lender which is

sufficiently creditworthy to fund remaining Loans hereunder, and upon any such assignment, and assumption by the assignee, the Lender shall be relieved of all further obligations hereunder.

(b) Neither party may assign any of its rights and obligations under this Note in connection with a merger or similar reorganization or the sale of all or substantially all of its assets.

(c) This Note shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Note shall be void.

11. Set-off. If an Event of Default shall have occurred and be continuing, the Lender shall be entitled to deduct from payments to be made by it to the Company under the Collaboration Agreement any amounts then due and payable by the Company to it hereunder. If an event of default shall have occurred and be continuing which, with the giving of notice or the passage of time would become an Event of Default, the Lender shall be entitled to withhold payments which would otherwise be owed by the Lender to the Company under the Collaboration Agreement, pending either cure of such default or, if such default ripens into an Event of Default, setoff as provided herein.

12. Presentment, Demand, Etc. Except as otherwise provided herein, the Company hereby waives presentment for payment, demand, protest and notice of protest for nonpayment of this Note, and consents to any extension or postponement of the time of payment or any other indulgence.

13. Governing Law; Venue. The parties have agreed that this Note will be governed by and construed in accordance with the laws of the State of California. Any action or proceeding brought by either party seeking to enforce any provision of, or based on any right arising out of, this Note must be brought against any of the parties in the courts of the State of California. Each party (i) hereby irrevocably submits to the jurisdiction of the state courts of the State of California and to the jurisdiction of any United States District Court in the State of California, for the purpose of any suit, action, or other proceeding arising out of or based upon this Note or the subject matter hereof brought by any party or its successors or assigns, (ii) hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Note or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives and agrees not to seek any review by any court of any other jurisdiction that may be called upon to grant an enforcement of the judgment of any such California state or federal court.

14. Counterparts. This Note may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

15. Titles. The titles of the Sections of this Note are inserted for reference only, and are not to be considered as part of this Note in construing this Note.

(Signature page follows)

IN WITNESS WHEREOF, this Note has been executed and delivered on the date first above written by duly authorized representatives of the Company and the Lender.

XOMA (US) LLC

By: /s/ PETER DAVIS
Peter Davis
Vice President, Finance and
Chief Financial Officer

CHIRON CORPORATION

By: /s/ DAVID SMITH
David Smith
Chief Financial Officer

EXHIBIT A

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The capitalized terms used in this Exhibit A shall have the meanings set forth for each such term in the body of the Note to which it is attached.

1. Organization. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business as a foreign company in each jurisdiction where failure to qualify would have a material adverse effect on the business or properties of the Company. The Company has full company power and authority to own its property, to carry on its business as presently conducted and to carry out the transactions contemplated hereby.

2. Authorization. The Company has requisite company power to execute, deliver and perform this Note and the Security Agreement, and each such agreement has been duly executed and delivered by the Company and is the legal, valid and, assuming due execution by the Lender as necessary, binding obligation of the Company, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting creditors generally, and to general equitable principles. The execution, delivery and performance by the Company of this Note and the Security Agreement, including the borrowing of Loans as contemplated hereby have been duly and validly authorized by all necessary company action of the Company.

3. Valid Issuance of Note. This Note is duly authorized and validly issued.

4. Governmental Approvals. Based in part on the representations made by the Lender on Schedule 1 hereof, 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 laws, rules or regulations presently in effect, is or will be necessary to be made or obtained by the Company for, or in connection with the execution and delivery of this Note or consummation of the transactions contemplated hereby or performance by the Company of its obligations hereunder, except for such other filings under applicable securities laws which will be made by the Company within the prescribed periods, including the filing by the Company of a notice under Section 25102(f) of the California Corporations Code, as amended, and the payment of any fee relating thereto.

5. Non-Contravention. The execution, delivery and performance by the Company of this Note and the Security Agreement (i) do not and will not contravene or conflict with the certificate of formation or other organizational documents of the Company and (ii) do not contravene or conflict with or, based in part on the representations made by the Lender on Schedule 1 hereof, constitute a violation of any provision of law, regulation, judgment, injunction, order or decree binding upon or applicable to the Company, or result in a breach of or constitute a default under any material agreement of the Company (whether

upon notice or passage of time), in any manner which would materially and adversely affect the Lender's rights or its ability to realize the intended benefits to it under this Note or the Security Agreement.

6. Use of Proceeds. The Company has applied the proceeds of all Loans made hereunder solely as permitted by Section 2(f) hereof.

SCHEDULE 1 TO EXHIBIT A

REPRESENTATIONS AND WARRANTIES OF THE LENDER

The Lender hereby makes the following representations and warranties to the Company each time the Company makes the representations and warranties listed on the Exhibit A to the Note (the capitalized terms used in this Schedule 1 to Exhibit A shall have the meanings set forth for each such term in the body of the Note to which it is attached):

1. Corporate Power. The Lender is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Lender has full corporate power and authority to carry on its business as presently conducted and to carry out the transactions contemplated hereby.

2. Authorization. The Lender has full corporate power to execute, deliver and perform the Note and the Security Agreement and each such agreement has been duly executed and delivered by the Lender and is the legal, valid and, assuming due execution by the Company, binding obligation of the Lender, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting creditors' rights generally, and to general equitable principles. The execution, delivery and performance by the Lender of the Note and the Security Agreement, including the making of the loans contemplated thereby, have been duly and validly authorized by all necessary corporate action of the Lender.

3. Investment Representations.

(a) The Lender will acquire the Note for its own account for investment only and not with a view to any resale or distribution thereof, except pursuant to an effective registration statement under the Securities Act of 1933, as amended from time to time (the "Securities Act"), covering the sale, assignment or transfer or an opinion of counsel in form and substance satisfactory to the Company that such registration is not required.

(b) The Lender has had the opportunity to obtain, receive and review the Company's reports and other filings with the U.S. Securities and Exchange Commission and such other information as it deems necessary to understand the business and financial condition of the Company and to make the investment decision to purchase the Note.

(c) As an investor in companies in the biopharmaceutical industry and a participant in such industry, the Lender has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the investment represented by the Note, and it is able to bear the economic risk of such investment.

(d) The Lender understands that the Note will be issued in a transaction which is exempt from the registration requirements of the Securities Act by reason of the provisions of Section 4(2) of the Securities Act and that such Note will be subject to transfer restrictions and must be held indefinitely unless subsequently registered under the Securities Act or an exemption from such registration is available.

EXHIBIT B

LOANS AND PAYMENTS OF PRINCIPAL AND INTEREST

Tranche	Date	Principal Amount Borrowed	Principal Amount Repaid	Interest Paid	Notation By

Exhibit 10.4

[*] indicates that a confidential portion of the text of this agreement has been omitted. The non-public information has been filed separately with the Securities and Exchange Commission.

Execution Version

LICENSE AGREEMENT

This License Agreement (this "Agreement"), effective as of June 20, 2005 (the 'Effective Date"), is entered into by and between XOMA Ireland Limited, a company with limited liability organized under the laws of the Republic of Ireland having offices at Shannon Airport House, Shannon, County Clare, Ireland ("XOMA"), and Merck & Co., Inc., a corporation organized under the laws of the State of New Jersey having offices at One Merck Drive, Whitehouse Station, NJ 08889, U.S.A. ("Merck").

BACKGROUND

A. XOMA is the owner or exclusive licensee of certain patent rights and know-how relating to bacterial cell expression, and Merck wishes to acquire non-exclusive licenses under such patent rights and a right to receive and use such know-how; and

B. XOMA is willing to grant Merck, on its own behalf and on behalf of Merck Affiliates or Merck Collaborators (both as defined below), non-exclusive licenses, on the terms and conditions set forth below, in order to permit Merck, Merck Affiliates and Merck Collaborators to engage in certain research, development, production and commercial activities.

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter recited, the parties agree as follows:

ARTICLE 1

DEFINITIONS

In this Agreement, the following terms shall have the meanings set forth in this Article:

1.1 "Affiliate" means any corporation or other entity which is directly or indirectly controlling, controlled by or under common control with a party hereto. For purposes of this Section 1.1, "control" (including, with correlative meanings, the terms "controlled" and "controlling") means, with respect to a corporation or other entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of the subject corporation or other entity, whether through the ownership of voting securities, by agreement or otherwise.

1.2 "Antibody Expression" means the use of Merck Antibody Phage Display Materials at the Merck Authorized Sites, or the use of Licensed Antibody Expression Materials to conduct Research and Development.

1.3 "Article 2 Product" means a Product in which the Licensed Immunoglobulin was discovered, isolated, or characterized using materials or methods that constitute the practice of the XOMA Patent Rights or, if any, the use of XOMA Know-How under the licenses granted under Article 2.

1.4 "Article 3 Product" means a Product in which the Licensed Immunoglobulin was made or had made by or on behalf of Merck or a Merck Affiliate at a Merck Authorized Site or XOMA Authorized Site under conditions which constitute the practice of the XOMA Patent Rights or, if any, the use of XOMA Know-How under the licenses granted under Article 3.

1.5 "Article 2/Article 3 Product" means a Product that is both an Article 2 Product and an Article 3 Product.

1.6 [*]

1.7 [*]

1.8 "Change in Control" as used in Section 9.2 and 9.3 means, with respect to Merck or XOMA Ltd.: (a) any transaction or series of transactions as a result of which any person or group (as defined under the U.S. Securities Exchange Act of 1934, as amended) becomes, directly or indirectly, the beneficial owner of more than [*] of the total voting power of such entity's equity securities or otherwise gains control of such entity, or (b) if such entity is involved in a merger, reorganization or consolidation; *provided* that, as a result of such merger, reorganization or consolidation, the shareholders of Merck or XOMA Ltd., as applicable, immediately prior to the closing thereof do not own immediately after such closing at least [*] of the voting power of Merck or XOMA Ltd., as the case may be, or the surviving entity, or the parent of the surviving entity, or (c) if there is a sale of all or substantially all of such entity's assets or business relating to this Agreement.

1.9 "Combination Product" means a Merck Product sold in the form of a combination product containing one or more therapeutically active ingredients (other than a Licensed Immunoglobulin) in combination with a Licensed Immunoglobulin. All references to Merck Product in this Agreement shall be deemed to include Combination Product.

1.10 "Commercial Antibody Engineering Business" means, under conditions which but for the licenses granted hereunder would constitute infringement or would induce the infringement of a Valid Claim, the business of isolating, engineering, modifying or altering antibodies for any purpose (including, without limitation, to optimize or otherwise modify) on behalf of or for the benefit of a Third Party on a fee for service basis or under conditions where the party providing the service does not retain control and substantial scientific, financial and marketing risk with respect to the result or subject matter of such services.

1.11 "Commercial Antibody Evolution Business" means, under conditions which but for the licenses granted hereunder would constitute infringement or would induce the infringement of a Valid Claim, the business of modifying or altering antibodies discovered by a Third Party for any purpose (including, without limitation, to optimize or humanize or otherwise modify an attribute of the antibody) on behalf of or for the benefit of a Third Party on a fee for

service basis or under conditions where the party providing the service does not retain control and substantial scientific, financial and marketing risk with respect to the result or subject matter of such services.

1.12 "Commercial Antibody Display Business" means, under conditions which but for the licenses granted hereunder would constitute infringement or would induce the infringement of a Valid Claim, the business of out-licensing, commercial manufacturing, selling, (including, to offer, import or export for sale) antibody display services, antibody display libraries, products for use in antibody display, and antibody display materials, including, without limitation, antibody phage display libraries or antibody phage display materials.

1.13 "Confidential Information" means any proprietary or confidential information, data or material disclosed by a party to the other party pursuant to this Agreement, which is (a) disclosed in tangible form hereunder and is designated thereon as "Confidential" at the time it is delivered to the receiving party, or (b) disclosed orally hereunder and identified as confidential or proprietary when disclosed and such disclosure of confidential information [*].

1.14 "Control" and "Controlled By" With respect to any item of or right under patent rights, know how or other intellectual property, "Control" or "Controlled by" means the possession of (whether by ownership or license) the ability of a party to grant access to, or a license or sublicense of, such item or right subject to and without violating the terms of any agreement or other arrangement with any Third Party. With respect to the practice of any method of a Valid Claim or any composition of matter or article of manufacture arising out of this Agreement, "Control" or "Controlled by" means that such composition of matter, article of manufacture or method was or is, as applicable, created, owned, licensed, used and/or practiced by Merck and/or a Merck Affiliate on their own behalf, or on behalf of or with a Merck Collaborator under conditions where Merck or a Merck Affiliate retains decision-making power and substantial scientific and financial risk with respect to such composition of matter or article of manufacture.

1.15 "Development Service Provider" means a Third Party who, under an agreement with and at the direction of Merck, a Merck Affiliate or a Merck Collaborator, provides bona fide development services in support of activities otherwise authorized by and in conformity with this Agreement. No Third Party may be deemed a Development Service Provider under this Agreement if it has an economic interest or stake (other than a reasonable fee for service), including, without limitation, a royalty interest, in the outcome of the services it provides.

1.16 "Dispose" means to transfer, assign, lease, or in any other fashion, dispose of control, ownership or possession, but shall not mean to license or sell. "Disposition" shall have the correlative meaning.

1.17 "Existing Merck Collaborators" means those Merck Collaborators meeting the criteria set out in Section 1.27 (b) and (c) as of the Effective Date that are also listed on Schedule 1.17.

1.18 "First Commercial Sale" means, with respect to any Merck Product, the first sale for end use or consumption of such Merck Product in a country after Marketing Authorization,

excluding, however, any sale for use in a clinical trial or for demonstration, testing or promotional purposes.

1.19 "Immunoglobulin" means any molecule, including, without limitation, full immunoglobulin molecules (*e.g.*, IgG, IgM, IgE, IgA and IgD molecules) and ScFv, Fv and Fab molecules, that has an amino acid sequence by virtue of which it specifically interacts with an antigen and wherein that amino acid sequence comprises a functionally operating region of an antibody variable region including, without limitation, any naturally occurring or recombinant form of such a molecule.

1.20 "Licensed Antibody Expression Materials" means any composition of matter or article of manufacture, other than Merck Antibody Phage Display Materials, Controlled by, as applicable, Merck or a Merck Affiliate that comprises:

(a) any polynucleotide sequence encoding:

(i) an Immunoglobulin that is capable of being translocated to the periplasm of a bacterial host cell; and/or

(ii) an Immunoglobulin that is operably linked to a bacterially functional signal sequence; and/or

(iii) an Immunoglobulin that is capable of being secreted and/or expressed in a prokaryote and retain its binding or other function without subsequent refolding; or

(b) any vector containing any polynucleotide sequence described in clause 1.20 (a); or

(c) any prokaryote transformed with any vector or polynucleotide described in clause 1.20 (a) or (b); or

(d) any material covered by the XOMA Patent Rights, which is used to make and use any: polynucleotide described in clause 1.20 (a); vector described in clause 1.20 (b); or prokaryote described in clause 1.20 (c).

For the avoidance of doubt, and without expanding the definition thereof, specifically excluded from the definition of Licensed Antibody Expression Materials are (a) any materials used for or suitable for use to display a specific Immunoglobulin in or from any organism or system other than in a prokaryote or (b) any article of manufacture or composition of matter when used for the expression or secretion of an Immunoglobulin in or from any organism or system other than in a prokaryote.

1.21 "Licensed Immunoglobulin" means, to the extent Controlled by Merck or a Merck Affiliate, any Immunoglobulin:

(a) discovered, isolated or characterized by Merck or a Merck Affiliate directly out of the use of (i) Merck Antibody Phage Display Materials at a Merck Authorized Site or (ii) Licensed Antibody Expression Materials; or

(b) discovered, isolated or characterized, by a Merck Collaborator directly out of the use of Licensed Antibody Expression Materials; or

(c) acquired or in-licensed by Merck or a Merck Affiliate in accordance with the provisions set forth in Section 9.3.

1.22 "Manufacturing Field" means the production by Merck of an Immunoglobulin for the treatment, diagnosis, prevention and/or prophylaxis of a human or animal disease state or condition, other than via active immunization or vaccination, in quantities which exceed Research Quantities, and shall include commercial, industrial or clinical scale production, including process validation batches or supplies suitable for a clinical trial. Specifically excluded from the Manufacturing Field is any Immunoglobulin which, at the time of manufacture and thereafter, is not Controlled by Merck or a Merck Affiliate.

1.23 "Marketing Authorization" means any approval (including applicable pricing and governmental reimbursement approvals) required from the relevant regulatory or other competent authority to market or sell a Merck Product in any country.

1.24 "Merck Affiliate" means, with respect to the provisions of Article 2 any Affiliate of Merck as of the Effective Date or as provided in Section 9.3, and with respect to the remainder of this Agreement any Affiliate of Merck. Expressly excluded from the definition of Merck Affiliate is [*]. For the avoidance of doubt, the grant, if any, of any rights or licenses under XOMA Patent Rights or XOMA Know-How pursuant to this Agreement to any Merck Affiliate shall be effective only as of the date such entity becomes an Affiliate of Merck. Any rights or licenses granted to a Merck Affiliate automatically terminate upon the effective date of any Change of Control of such Merck Affiliate.

1.25 "Merck Antibody Phage Display Materials" means, when Controlled by Merck or a Merck Affiliate, (i) any collection or library of polynucleotide sequences which encodes at least one Immunoglobulin and which is contained in bacteriophage and/or bacteriophage or phagemid cloning vectors capable of propagation in bacteria; or (ii) any collection or library of bacteriophage wherein an Immunoglobulin is expressed as a fusion protein comprising an Immunoglobulin, or at least a functionally operating region of an antibody variable region, and an outer surface polypeptide of a bacteriophage, excluding any articles of manufacture or compositions of matter when used for display, expression or secretion of an Immunoglobulin in or from any organism or system other than a prokaryote.

1.26 "Merck Authorized Sites" means (a) as it relates to Research and Development, any location(s) under the exclusive management of Merck or a Merck Affiliate and (b) as it relates to activities within the Manufacturing Field, where each of up to three (3) locations are

under the exclusive management of Merck or a Merck Affiliate and are specified in writing to XOMA, but shall not include a XOMA Authorized Site.

1.27 "Merck Collaborator" means a Third Party:

(a) who has complied with the requirements of Section 2.5;

(b) who has entered into a written arrangement with Merck under which Merck or a Merck Affiliate retains Control with respect to the research, development and commercialization of any composition of matter or article of manufacture, including, without limitation, any Licensed Immunoglobulin or Merck Product, which is the subject of such a written arrangement; and

(c) (i) on whose behalf Merck or a Merck Affiliate engages in Antibody Expression or

(ii) to whom Merck or Merck Affiliates transfers Licensed Antibody Expression Materials or Licensed Immunoglobulins; or

(iii) from whom Merck in-licenses a target for development or commercialization; or

(iv) to whom XOMA has granted a license under XOMA Patent Rights to make, have made, use and/or transfer Immunoglobulins under conditions which constitute the practice of the XOMA Patent Rights, *provided*, *however*, that (A) the activities under this Agreement are not inconsistent with or violate the terms of such license and (B) the terms of this Agreement shall govern any activities undertaken by or on behalf of a Merck Collaborator.

No Third Party shall be deemed to be a Merck Collaborator to the extent such Third Party is engaged in activities constituting a Commercial Antibody Engineering Business, Commercial Antibody Evolution Business or Commercial Antibody Display Business unless such Third Party has entered into a written agreement with XOMA pursuant to which XOMA grants to such Third Party a license or covenant not to sue under the XOMA Patent Rights to make, have made, use and/or transfer Immunoglobulins under conditions which constitute a Commercial Antibody Engineering Business, Commercial Antibody Evolution Business or Commercial Antibody Display Business, *provided*, [*].

1.28 "Merck Field" means (a) Research and Development; and (b) any and all human and animal uses, other than any Non-Approved Uses. For the avoidance of doubt, activities within the veterinary or animal field are included in the definition of the term Merck Field.

1.29 "Merck Product" means, collectively, an Article 2 Product, an Article 3 Product and an Article 2/Article 3 Product.

1.30 "Net Sales" means the gross invoice price of Merck Product sold by Merck, Merck Affiliates and Merck Selling Entities (which term does not include Third Parties that

function as distributors) to the first Third Party (other than a Merck Selling Entity) after deducting, if not previously deducted, from the gross amount invoiced by Merck, the Merck Affiliate, or the Merck Selling Entity the following items:

(a) trade, cash and quantity discounts actually allowed and taken directly with respect to such sales;

(b) excises, sales taxes or other taxes imposed upon and paid directly with respect to such sales (excluding national, state or local taxes based income);

(c) amounts repaid or credited by reason of rejections, defects, recalls, allowances or returns or because of rebates or retroactive price reduction;

(d) freight, transportation and insurance; and

(e) [*].

With respect to sales of Combination Products and on a country-by-country basis, the "Net Sales" for royalty purposes shall be calculated by [*]. All invoice prices of the Merck Product and the Combination Product shall be calculated as the average invoice price of such active ingredients during the applicable accounting period for which the Net Sales are being calculated.

If a Merck Product is sold in any country only in the form of a Combination Product, Net Sales for royalty purposes shall be calculated on the basis of [*].

1.31 "Non-Approved Uses" means (a) catalog or on-line sales of cloning or expression vectors, reagents or research or commercial kits other than diagnostic or therapeutic products; (b) plant science or agricultural applications, other than the expression of an Immunoglobulin in a plant for use within the Merck Field; (c) other than Merck Antibody Phage Display Materials, the creation or expression of peptides or polypeptides associated with any replicable genetic package, including, without limitation, display on a bacteriophage and/or (d) identification, selection or expression of proteins, reagents, and/or enzymes or compositions of matter for purely industrial uses, other than the use of a Licensed Immunoglobulin in the process of making a Merck Product, or which are solely useful in the chemical industry and/or industrial manufacturing processes, including, without limitation, the identification, selection or expression of catalytic antibodies.

1.32 "Phase I Trial" means a human clinical trial in any country that is intended to initially evaluate the safety and/or pharmacological or antigenic effect of a Merck Product in human subjects or that would otherwise satisfy the requirements of 21 CFR 312.21(a).

1.33 "Phase III Trial" means a pivotal human clinical trial in any country the results of which could be used to established safety and efficacy of a Merck Product as a basis for a Marketing Authorization application that would satisfy the requirements of 21 CFR 312.21(c).

1.34 "Product" means a pharmaceutical, diagnostic or biological preparation (including, without limitation, any diagnostic, prophylactic or therapeutic product) containing a

Licensed Immunoglobulin in final form ready for sale and, with respect to the obligations under Sections 4.4 (Article 2 Product Milestone Payments), 4.5 (Article 3 Product Milestone Payments) and 4.6 (Milestone Payments - General), such a preparation administered to human patients in a clinical trial.

1.35 "Research and Development" means pre-clinical creation, identification, analysis, research, characterization or development of actual or potential products (including, without limitation, antibody arrays or chips) for any purpose, including the discovery and development of therapeutics. Included within the definition of Research and Development, without limiting such definition, shall be the identification, selection, isolation, purification, characterization, study and/or testing of an Immunoglobulin and all *in vitro* screening or assays customarily performed in pre-clinical research. Research and Development shall not include clinical, commercial or industrial manufacture of Immunoglobulins or any activities primarily directed to the creation of such capacities.

1.36 "Research Quantities" means those quantities required for Research and Development purposes.

1.37 "Third Party" means any person or entity other than Merck, XOMA, or their respective Affiliates.

1.38 "Valid Claim" means a claim of an issued and unexpired patent included within the XOMA Patent Rights which claim has not been revoked, held unenforceable, or held invalid in a final decision of a court of competent jurisdiction, unappealed or from which no appeal may be taken, and which has not been disclaimed or admitted to be invalid or unenforceable through reissue, re-examination, disclaimer or otherwise.

1.39 "XOMA Know-How" means unpatented and/or unpatentable technical information, including ideas, concepts, inventions, discoveries, data, designs, formulas, specifications, procedures for experiments and tests and other protocols, results of experimentation and testing, fermentation and purification techniques, and assay protocols that are: (a) Controlled by XOMA (or its Affiliates) as of the date such information is transferred to Merck in accordance with this Agreement; (b) not generally known and (c) that constitutes the then standard package of materials and information generally provided by XOMA to its manufacturing licensees and/or research licensees (as applicable). XOMA Know-How shall not include the XOMA Patent Rights. All XOMA Know-How shall be Confidential Information of XOMA.

1.40 "XOMA Ltd." means XOMA Ltd., a company organized under the laws of Bermuda having its registered office at Clarendon House, 2 Church Street, Hamilton HMII, Bermuda.

1.41 "XOMA Patent Rights" means the patent applications and patents listed on Schedule 1.41 hereto, and all divisions, continuations, continuations-in-part, applications claiming priority thereto, and substitutions thereof and all patents issuing on any of the preceding applications, including extensions, reissues and re-examinations; and any patents or patent applications, whether now existing or obtained in the future, owned or Controlled by XOMA (or its

Affiliates) containing a claim that is dominating over the foregoing patent rights (*i.e.*, is necessarily infringed by the practicing of a claim in one of the foregoing applications or patents).

[*]

In addition, the following terms are defined in the corresponding sections indicated below:

Term	Section
AAA	9.12(a)
Acquired Immunoglobulins	9.3(b)
Acquisition Entity	9.3(a)
Annual Maintenance Fee	4.2
Article 2 Milestone Payment	4.4
Article 3 Milestone Payment	4.5
[*]	4.7(e)
Closing	9.3(a)
Merck Selling Entity	2.1(b)
Pending Patent Claim	4.7(d)
Records	2.6(c)
Release	2.9
Release Fee	9.3(b)
Retrospective Period	4.7(d)
Title XI	9.9
Transferred Materials	2.5(a)
XOMA Authorized Site	3.2
XOMA Indemnified Party	7.1
XOMA Liability	7.1

All of the above definitions are intended to encompass the defined terms in both the singular and plural forms.

ARTICLE 2

GRANT OF RIGHTS

2.1 License Grants.

(a) Subject to the other terms and conditions of this Agreement, XOMA hereby grants to Merck a non-exclusive worldwide, non-transferable (other than as provided in Section 9.2) license within the Merck Field, without any right to sublicense (except to Merck Affiliates), under the XOMA Patent Rights and the XOMA Know-How:

(i) solely on behalf of Merck, or on behalf of Merck Affiliates and Merck Collaborators, to:

(A) engage in Antibody Expression;

(B) make and use Merck Antibody Phage Display Materials for Research and Development purposes at the Merck Authorized Sites, including to discover Immunoglobulins;

(C) make and use Licensed Antibody Expression Materials for Research and Development purposes, including to discover, isolate, characterize, modify, make (but not commercially manufacture) or develop Immunoglobulins;

(D) engage in Research and Development;

(E) make, have made or use Research Quantities of Licensed Immunoglobulins; and

(F) transfer to and receive from Merck Collaborators and Development Service Providers, Licensed Antibody Expression Materials, Merck Antibody Phage Display Materials (but only at the Merck Authorized Sites), and Research Quantities of Licensed Immunoglobulins; and

(ii) use, sell, offer to sell, import and export any Merck Product and to seek approvals from regulatory agencies in any country of the world to market and sell Merck Products.

(b) Merck is entitled to grant a license to Third Parties solely as is necessary for such Third Parties to sell Merck Product(s) on behalf of Merck and Merck Affiliates, and any such licensee shall be referred to in this Agreement as a "Merck Selling Entity." The term "Merck Selling Entity" shall not include Third Parties that function as distributors. Merck shall remain responsible for the performance of any Merck Selling Entities and for any failure of a Merck Selling Entity to abide by the terms of this Agreement applicable to such Merck Selling Entity, including, without limitation, Sections 4.7 (Royalties), 4.9 (Payments; Currency), 4.10 (Payment Reports and Timing) and 4.11 (Payment Records and Audits).

(c) For the avoidance of doubt, but without limiting the scope of the license granted above, the license granted to Merck under this Section 2.1:

(i) does not permit Merck or any Merck Collaborator to manufacture, other than Research Quantities, Merck Products using any process which would infringe a Valid Claim (it being understood that manufacturing rights are covered by Article 3 of this Agreement, and are separate and independent from the licenses and rights granted pursuant to this Section 2.1);

(ii) neither limits or applies to the conduct by Merck or its Affiliates, on their own behalf, or on behalf of their research or development collaborators (including Merck Collaborators), of any of the activities described in subsections 2.1 (a)(i) through (a)(ii) to the extent that the conduct of such activities, absent the license granted in this Section 2.1 would not infringe any of the XOMA Patent Rights or result in the misappropriation of XOMA Know-How;

(iii) does not permit Merck to make or use Merck Antibody Phage Display Materials at any location other than the Merck Authorized Sites; and

(iv) is personal to Merck, Merck Affiliates and, as applicable, Merck Collaborators, and is to be used on behalf of any Merck Collaborator only in respect of or in connection with the activities that such Merck Collaborator is engaged in that are the basis for meeting the definition of Merck Collaborator, as the case may be, and not any other activities. Notwithstanding that such license is personal, the parties intend that such license rights: (A) transfer with any assignment or sale of, or grant of an exclusive license (with the right to enforce) under, the applicable XOMA Patent Rights and (B) without limiting or expanding the provisions of Section 9.2, shall be binding upon any permitted successors or assigns of XOMA (and its Affiliates).

2.2 Covenant Not To Sue. In partial consideration of the payments set out in Article 4, XOMA covenants that it shall not initiate or permit any XOMA Affiliate or any Third Party over whom it has control or who obtains from XOMA a right to enforce the XOMA Patent Rights to initiate or assist in any way in the initiation or prosecution of any action asserting a claim of infringement under the XOMA Patent Rights or misappropriation of the XOMA Know-How, if any, against Merck, a Merck Affiliate, a Merck Selling Entity or any Merck Collaborator with respect to activities permitted under the provisions of this Agreement. For the avoidance of doubt, this covenant not to sue extends to Merck Collaborators who, solely on their own behalf, but only as a Merck Collaborator, or on behalf of Merck or Merck Affiliates, make or use Research Quantities of a Licensed Immunoglobulin under conditions otherwise authorized by this Agreement or make or use a Licensed Immunoglobulin in accordance with the provisions of Article 3 where such activities are reasonably related to a Licensed Immunoglobulin. For the avoidance of doubt, this covenant not to sue extends only to compositions of matter or articles of manufacture Controlled by Merck, a Merck Affiliate or a Merck Collaborator (but in the case of a Merck Collaborator only to the extent such Control by such Merck Collaborator is otherwise authorized under this Agreement). The parties agree that the covenant not to sue provided by this Section 2.2 (a) is a covenant that transfers with any assignment or sale of, or grant of an exclusive license (with the right to enforce) under, the applicable XOMA Patent Rights and (b) without limiting or expanding the provisions of Section 9.2, shall be binding upon any permitted successors or assigns of XOMA (and its Affiliates). The covenant not to sue provided by this Section 2.2:

(i) shall not preclude a claim of infringement or misappropriation of the XOMA Know-How, if any, arising out of making or the means or methods used to make any amount other than Research Quantities of Licensed Immunoglobulin or Merck Product under conditions which are outside the grant of rights and licenses under Article 3;

(ii) shall become voidable by XOMA as to any Third Party who, as a Merck Collaborator, claims its benefit but fails to materially discharge or comply with any term of its written agreement with Merck provided for in Section 2.5, but only with respect to such entity or person. Merck will use commercially reasonable efforts to keep itself apprised of facts which would put a reasonable person on notice of such a failure or lack of compliance. If Merck becomes aware or otherwise determines that a Merck Collaborator

fails to materially discharge or comply with any term of its written agreement with Merck provided for in Section 2.5, Merck shall inform such Merck Collaborator of such failure or lack of compliance and request that such Merck Collaborator cure such failure or lack of compliance. If such Merck Collaborator does not cure any actual failure or lack of compliance within [*] of so being informed by Merck, then such Merck Collaborator shall lose its status as a Merck Collaborator under this Agreement and all applicable licenses and rights granted to such Merck Collaborator under this Agreement (but not any licenses or rights so granted to Merck) shall be deemed void as of the date of such actual failure or lack of compliance;

(iii) is personal to Merck, Merck Affiliates and, as applicable, any Merck Collaborator and, except as provided for in Section 9.2, cannot be assigned or transferred by Merck; and

(iv) subject to and without prejudice to the release set out in Section 2.9, does not constitute a release or waiver of any infringement of the XOMA Patent Rights or misappropriation of the XOMA Know-How by Merck, any Merck Affiliate, or any Third Party (including a Merck Selling Entity), including, without limitation, any Merck Collaborator acting outside of the scope of the written agreement with Merck provided for in Section 2.5 or the grant of rights or licenses provided for by this Agreement.

2.3 No Implied Rights. Only the rights and licenses granted pursuant to the express terms of this Agreement shall be of any legal force. No license or other rights shall be deemed to have been granted by Merck to XOMA or its Affiliates, or by XOMA to Merck, a Merck Affiliate, a Merck Selling Entity or a Merck Collaborator other than as expressly provided for in this Agreement. For the avoidance of doubt, the grant of rights made pursuant to Section 2.1 and the covenant not to sue pursuant to Section 2.2:

(a) do not include, and expressly exclude, the following:

(i) any right or license to engage in any activities on behalf of or in collaboration with any Third Party, other than a Merck Collaborator or a Merck Selling Entity;

(ii) any right or license to engage in a Commercial Antibody Engineering Business, Commercial Antibody Evolution Business or Commercial Antibody Display Business;

(iii) any right to release any Third Party, including a Merck Collaborator, from any claim of infringement under the XOMA Patent Rights or misappropriation of the XOMA Know-How;

(iv) any right or license under the XOMA Patent Rights or the XOMA Know-How to sell, license or Dispose of to a Third Party any materials suitable for phage display, including Merck Antibody Phage Display Materials or to permit a Third Party to make or use phage display materials, including Merck Antibody Phage Display Materials; and/or

(v) any right or license to use or cause any Third Party, other than a Merck Affiliate or Merck Collaborator, to use any composition of matter or article of manufacture covered by the XOMA Patent Rights other than Licensed Antibody Expression Materials to identify, select, characterize, study or test a polypeptide, including but not limited to an Immunoglobulin; and

(b) extend rights to Merck Collaborators, but do not confer any rights to such Merck Collaborator which are independent of the rights and licenses granted to Merck or Merck Affiliates.

2.4 Transfer of XOMA Know-How to Merck. At the written request of Merck, XOMA shall transfer to Merck, at a mutually agreed place and time, XOMA Know-How and the materials identified on Schedule 2.4 (which materials shall constitute XOMA Know-How unless at the time of such transfer, the materials are not Controlled by XOMA or are generally known). XOMA Know-How transfer is included in the fee paid pursuant to Section 4.1, and includes up to two person-days of XOMA scientific staff time at XOMA's (or XOMA Affiliate) facilities. Thereafter, Merck may request and XOMA shall provide consult with XOMA scientific staff at such facilities at $[*]/person-day (based on an eight hour day) beyond the two person-days. There shall be no requirement that Merck take any such XOMA Know-How and any references to such XOMA Know-How in this Agreement shall only be to the extent that Merck actually requests and receives such XOMA Know-How. The parties acknowledge that the materials to be transferred to Merck shall be limited to XOMA's then standard package of materials provided to its bacterial expression licensees. Notwithstanding anything herein to the contrary, no right or license is granted pursuant to this Article 2 under the XOMA Know-How unless and until Merck makes the request referred to in the first sentence of this Section 2.4.

2.5 Transfer Restrictions.

(a) To the extent the following activities involve or will involve the practice of any XOMA Patent Rights and/or XOMA Know-How pursuant to, or any claim to benefit of, any license or right granted under this Agreement, Merck shall not [*] ("Transferred Materials") to any Third Party until (in the case of either clause (i) or clause (ii)) such time as it has provided to such Third Party the redacted copy of this Agreement referred to in Section 5.2 and the form of notice set out at Schedule 2.5. Merck covenants that it shall not Dispose of or sell to a Third Party any Merck Antibody Phage Display Materials except as otherwise expressly permitted under this Agreement. For any entity that is an Existing Merck Collaborator, Merck shall use commercially reasonable efforts to comply with the provisions of this Section 2.5(a) as soon as practicable after the Effective Date. Any transfers of the XOMA Know-How to any Merck Collaborator shall only be as reasonably necessary for the activities to be undertaken by the Merck Collaborator as a Merck Collaborator and shall occur only after such Merck Collaborator agrees to keep such XOMA Know-How confidential.

(b) Except with respect to Existing Merck Collaborators, if Merck enters into a written arrangement after the Effective Date with any Third Party for activities as to which Merck or such Third Party, as a Merck Collaborator, claims or intends to claim the benefits of any of the licenses or other grants provided for by this Agreement, such written arrangement shall contain provisions (i) pursuant to which the recipient of any Transferred Materials agrees to abide by

each of the limitations, restrictions and other obligations pertaining to the Transferred Materials applicable to Merck Collaborators contained in this Agreement; (ii) implementing a covenant not to use Transferred Materials for any purpose other than for Research and Development otherwise authorized by this Agreement; (iii) providing that the payment of any amounts by such Merck Collaborator is not in consideration for the use of any of the XOMA Patent Rights and (iv) permitting the recipient of such Transferred Materials to further Dispose of such Transferred Materials only to a Third Party who otherwise meets the definition of Merck Collaborator and who executes a written agreement in which it undertakes all of the obligations applied to the transferring party. [*] For the avoidance of doubt, the right of a Merck Collaborator, shall, as it relates to Research and Development, encompass any product or process claims contained within the XOMA Patent Rights, but only to the extent such activities are reasonably necessary to the collaboration as to which such person or entity is a Merck Collaborator and then only to the extent Merck or a Merck Affiliate Controls any composition(s) of matter or article(s) of manufacture arising out of such practice of such claims. For any entity that is an Existing Merck Collaborator, Merck shall use commercially reasonable efforts to comply with the provisions of this Section 2.5(b) as soon as practicable after the Effective Date. Notwithstanding any other provision of this Agreement, Merck's failure to have secured the written agreement of any such Existing Merck Collaborator to comply with this Section 2.5(b) shall not give rise to a breach of this Agreement by Merck (*provided* that Merck has exercised commercially reasonable efforts in the attempt to secure the agreement of the Existing Merck Collaborator) but shall result in the loss by such Existing Merck Collaborator of all of its rights under this Agreement.

(c) The provisions of Section 2.5(a) shall not apply to (i) any Development Service Provider,*provided*, *however*, that no customer, client or user of the Development Service Provider's services or materials generated thereby (other than, as applicable, as properly used by Merck, a Merck Affiliate or a Merck Collaborator under this Agreement) shall be deemed to have been granted any rights or licenses under the XOMA Patent Rights or the XOMA Know-How as a result of the application of this Section 2.5(c); or (ii) the XOMA Authorized Site with which Merck has entered into a manufacturing agreement in accordance with the provisions of Section 3.2.

2.6 Reports, Records and Audits.

(a) [*] days after the end of each calendar quarter, commencing with the first calendar quarter after the Effective Date, Merck shall deliver to XOMA a written report which shall specify the name, address and contact person for each Merck Collaborator receiving Licensed Antibody Expression Materials or Licensed Immunoglobulin(s), in each case solely to the extent the activities conducted by Merck for or with such Merck Collaborator involve any claim to the benefit of any license or right under XOMA Patent Rights and XOMA Know-How granted under this Agreement, *provided*, *however*, that, solely with respect to Existing Merck Collaborators, such disclosure does not violate any confidentiality obligations existing prior to the Effective Date that Merck has to such Existing Merck Collaborator. [*] The reports delivered by Merck to XOMA pursuant to this Section 2.6(a) shall be Confidential Information of Merck.

(b) Not later than [*] days after the end of each calendar year, commencing with the first calendar year to commence after the Effective Date, as and to the extent publicly disclosed

by Merck (whether in press releases, government filings or similar written disclosure), Merck shall deliver to XOMA written materials pertaining to the current status of activities as to which Merck, any Merck Affiliate or any Merck Collaborator claims the right of license hereunder but only to the extent that Merck has made public disclosure of such activities.

(c) Merck shall, maintain records fully and properly reflecting those activities to be reported to XOMA pursuant to Sections 2.6 (a) and (b) (the Records"), in reasonable detail and in good scientific manner for at least [*], and shall cause Merck Affiliates to, and contractually require that all Merck Collaborators do the same. If XOMA believes that Merck, a Merck Affiliate and/or the Merck Collaborators are not in compliance with the requirements of Section 2.6(a) and (b), XOMA will send Merck a written notice specifying the suspected noncompliance. Within [*] of such notice, Merck will provide XOMA with a written response addressing the issues raised in XOMA's notice. If following XOMA's consideration of Merck's response in good faith, it is not satisfied, then, within [*] of written notice by XOMA, the parties shall meet to discuss the matter in good faith, *provided*, *however*, that if the matter is not resolved to XOMA's satisfaction within [*] of such meeting, XOMA may declare an impasse and exercise any other rights it might have under this Agreement.

2.7 Rights of Merck Affiliates. Merck shall be fully responsible for the performance of Merck Affiliates and for any failure of any Merck Affiliate to abide by the terms of this Agreement. If XOMA believes that any Merck Affiliate is undertaking activities which are outside the scope of the rights granted under this Agreement or that such Merck Affiliate is not in compliance with the terms of this Agreement, XOMA shall, at its option, provide written notice thereof to Merck. Merck shall promptly investigate the activities of such Merck Affiliate and shall take prompt remedial action, if required and report to XOMA the specifics of such remedial action. If Merck believes no such remedial action is required, it shall so notify XOMA in writing and state its basis for such a conclusion. In the event that any Merck Affiliate undertakes activities outside the scope of the rights granted by this Agreement or fails to abide by the terms of this Agreement, or if Merck fails to correct activities of such a nature otherwise properly identified by XOMA, then, in addition to its other rights under this Agreement, XOMA, at its option, may terminate all licenses granted to such Merck Affiliate on [*] written notice and such Merck Affiliate would no longer be entitled to operate under the XOMA Patent Rights and XOMA Know-How licensed under this Agreement, *provided*, *however,* that in the event of a good faith dispute with respect to the existence of a material breach, the [*] cure period shall be tolled until such time as the dispute is resolved pursuant to Section 9.12, *provided, further, however,* that in the event the arbitral panel decides in accordance with Section 9.12 that there exists a material breach and XOMA subsequently terminates the licenses granted to such Merck Affiliate as provided in this Section 2.7, such termination shall be retroactive to, and the licenses granted to such Merck Affiliate shall be void as of, the date on which such material breach first occurred.

2.8 Ownership; Enforcement. At all times XOMA will retain ownership of the XOMA Patent Rights and may use and commercialize such XOMA Patent Rights itself or with any Third Party. XOMA retains the right, at its sole discretion, to enforce, maintain and otherwise protect the XOMA Patent Rights.

2.9 Release. For consideration set forth herein (including payment in full of the amount set out in Section 4.1), XOMA (on its own behalf, and behalf of its Affiliates) permanently and forever and without further payment or conditions releases Merck, any current Merck Affiliate and their respective officers, directors, shareholders and employees from any claims, causes of action, liabilities, demands, rights of action and damages of any nature, existing as of the Effective Date and arising out of and/or based upon or relating in any way to any act or omission prior to the Effective Date that arises under or relates to the XOMA Patent Rights, including, without limitation, any claim of infringement of the XOMA Patent Rights (the "Release"), *provided*, *however*, that the Release shall not extend to any composition of matter or article of manufacture which Merck or the Merck Affiliate does not, as of and after the Effective Date, Control. For the avoidance of doubt, the Release in no way modifies Merck's payment obligations set out in Article 4 with respect to a Licensed Immunoglobulin or Merck Product that may be subject to the Release. Nothing in this Section 2.9 shall be deemed to be a release of any claim, demand or right of action XOMA or its Affiliates may now or in the future have against any entity or person other than Merck or such Merck Affiliates, including, without limitation, any entity or person engaged in a Commercial Antibody Display Business, Commercial Antibody Evolution Business, or Commercial Antibody Engineering Business utilizing bacterial expression of an Immunoglobulin, except in the case of an Existing Merck Collaborator, but only to the extent of compositions of matter or articles of manufacture created prior to the Effective Date and Controlled by Merck or a Merck Affiliate that arose directly out of the collaboration which forms the basis for the Merck Collaborator's status as a Merck Collaborator. The Release shall become irrevocable only upon receipt by XOMA of payment in full by Merck of the amount set forth in Section 4.1 and shall be voidable by XOMA if upon written notice to Merck such amount is not received by XOMA on or prior to the [*] following written notice to Merck from XOMA of Merck's breach in the payment of the full amount thereof, but shall be ratified by XOMA and become irrevocable upon XOMA's acceptance of any payment received thereafter. XOMA expressly waives the benefits of any statutory provision or common law rule that provides, in sum or substance, that a release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release that, if known by it, would have materially affected its agreement to release the other party. For the avoidance of doubt, Merck, on its own behalf and on behalf of the Merck Affiliates, acknowledges that the Release does not waive or constitute a waiver of any obligation to pay any of the amounts payable under Article 4 with respect to Licensed Immunoglobulins or Merck Products [*] prior to the Effective Date.

ARTICLE 3

PRODUCTION LICENSE

3.1 Production License. In addition to the other licenses granted by this Agreement, within the Manufacturing Field, XOMA hereby grants to Merck a non-exclusive, non-assignable and non-transferable (other than as provided in Section 9.2), right and license under the XOMA Patent Rights and the XOMA Know-How, without the right to sublicense (except as provided in Section 3.2), to:

(a) make and have made Merck Products at the Merck Authorized Sites and/or the XOMA Authorized Sites for itself and/or for Merck Affiliates or Merck Selling Entities; and

(b) to use, sell, have sold, offer to sell, import and/or export Merck Products.

The license granted in this Section 3.1 shall not be effective unless and until Merck makes the payment provided for in Section 4.3 in accordance with the terms thereof. The license granted in this Section 3.1 shall not extend to any claims in any of the XOMA Patent Rights for the production of Immunoglobulins outside of bacterial hosts or bacterial cells or to any composition of matter or article of manufacture discovered, isolated, characterized, modified, made or developed by a Third Party other than a Merck Collaborator. The rights granted to Merck pursuant to this Section 3.1 shall be extended to sites managed by Merck or a Merck Affiliate in addition to the Merck Authorized Sites upon payment to XOMA of the fee set forth in the proviso to Section 4.3, whereupon the rights and obligations of Merck with respect to the license granted in this Section 3.1 shall also be extended to each such additional site and such Merck Affiliate, if applicable, *mutatis mutandis*.

3.2 XOMA Authorized Site. Merck may "have made" Licensed Immunoglobulins or Merck Products under the XOMA Patent Rights and the XOMA Know-How in the Manufacturing Field at the XOMA Authorized Site. All activities at the XOMA Authorized Site in the Manufacturing Field shall be pursuant to a contract manufacturing agreement with Merck pursuant to which the XOMA Authorized Site contractually agrees with Merck to: (i) implement such customary and usual safeguards as may be necessary to insure that any XOMA Know-How that Merck provides to the manufacturer is accessed and utilized by that manufacturer on a "need to know" basis only; (ii) limit the right to transfer or use Licensed Immunoglobulins, XOMA Patent Rights and XOMA Know-How to any Third Party, except to a Development Service Provider or as necessary to perform under the manufacturing agreement; (iii) undertake the activities solely on behalf of Merck or a Merck Affiliate and as a result of such activities shall not claim any license or right under the XOMA Patent Rights or XOMA Know-How for the benefit of itself or any other Third Party; (iv) abide by similar terms of confidentiality as those set forth in Article 5 of this Agreement; (v) represent that to the best of its knowledge, after reasonable investigation, it is not currently infringing any of the XOMA Patent Rights; (vi) name XOMA as a third party beneficiary of those provisions dealing with the permitted use of XOMA Confidential Information, and the restriction or use Licensed Immunoglobulins, XOMA Patent Rights and XOMA Know-How; and (vii) abide by the terms and conditions of any manufacturing agreement in place between such XOMA Authorized Site and XOMA, *provided*, *however*, that such XOMA Authorized Site shall not disclose to XOMA any confidential information of Merck or any Merck Affiliate. Merck shall provide XOMA a reasonable opportunity prior to execution of any such agreement to review a redacted version of such agreement that is sufficient to confirm the foregoing obligations. Merck shall remain fully and primarily liable for all actions of, or failures to act by, such XOMA Authorized Site in connection therewith and agrees to hold XOMA harmless with respect to any such action(s) or failure(s) to act and the requirements set out in subclauses (i) through (vii) of this Section 3.2. For the avoidance of doubt, Merck acknowledges that no such delegation of rights shall relieve Merck of its responsibilities for performance of any of its obligations hereunder. For the purposes of this Section 3.2, the "XOMA Authorized Site"

shall mean, at any given time, the single contract manufacturer designated in writing from time to time by Merck. None of [*] may be a XOMA Authorized Site, absent the prior written consent of XOMA, such consent to be in the sole discretion of XOMA.

3.3 XOMA Transfer to Merck. Upon Merck's written request at any time after payment of the fee provided for in Section 4.3 in accordance with its terms, XOMA shall transfer to Merck, at a mutually agreed place and time, XOMA Know-How and the materials identified on Schedule 3.3 (which materials shall constitute XOMA Know-How unless at the time of such transfer, the materials are not Controlled by XOMA, or are generally known). Technology transfer is included in the license fee paid pursuant to Section 4.3 and includes up to two person-days of XOMA scientific staff time at XOMA's (or its Affiliate's) facilities within ninety (90) days of payment of the fee provided for in Section 4.3 in accordance with its terms (which period may be extended by mutual consent of the parties, which consent shall not be unreasonably withheld). Thereafter, Merck will be able to consult with XOMA scientific staff at $[*]/person-day (based on an eight hour day) beyond the two person-days. The cost of all reasonable travel-related expenses will be fully reimbursed to XOMA by Merck. The parties acknowledge that the materials to be transferred to Merck shall be limited to XOMA's then standard package of materials provided to its manufacturing licensees. Notwithstanding anything herein to the contrary, no right or license is granted pursuant to this Article 3 under the XOMA Know-How unless and until Merck makes the request referred to in the first sentence of this Section 3.3.

3.4 No Implied Rights. Only the rights and licenses granted pursuant to the express terms of this Article 3 shall be of any legal force or effect with respect to any activities within the Manufacturing Field, and the grant of rights pursuant to this Article 3 shall confer no right or license to engage in any of the activities covered by Article 2, including, without limitation, Research and Development or Antibody Phage Display. The rights and license granted by this Article 3 shall be read as being separate and independent from the licenses and rights granted pursuant to Article 2.

ARTICLE 4

PAYMENTS

4.1 Technology Access, Release and Third Party Release Fee In consideration for the rights granted to Merck and the obligations of XOMA under this Agreement, Merck shall pay XOMA, no later than [*] days after the Effective Date, a fee of [*] United States Dollars (US$[*]).

4.2 Annual License Maintenance Fee. To maintain the licenses granted in Article 2 and Article 3 of this Agreement, Merck shall pay to XOMA an annual maintenance fee in advance due on each of the first [*] anniversaries of the Effective Date ("Annual Maintenance Fee"). No Annual Maintenance fee is due for the first year of this Agreement. The first Annual Maintenance Fee is payable on the first anniversary of the Effective Date. Upon payment by Merck of the [*] Annual Maintenance Fee, Merck shall no longer have any annual maintenance fee obligations to XOMA, it being understood that the foregoing in no way modifies Merck's payment obligations set out in Section 4.4, Section 4.5 and Section 4.7. The amount of such Annual Maintenance Fee shall be as follows:

(a) [*] United States Dollars (US$[*]), for each of the [*] payments where Merck had not paid the fee provided for in Section 4.3 in accordance with its terms prior to the due date of such payment; or

(b) [*] United States Dollars (US$[*]) for each of the [*] years where Merck had paid the fee provided for in Section 4.3 in accordance with its terms prior to the due date of such payment.

4.3 Manufacturing License Fee. To make the license granted under Section 3.1 effective, in consideration for the rights granted to Merck and the obligations of XOMA under Article 3, Merck shall pay XOMA a one-time, non-refundable fee of [*] United States Dollars (US$[*]) within [*] days following delivery to XOMA of written notice of Merck's intention to do so, *provided*, *however*, that the grant of rights to Merck pursuant to Section 3.1 shall be extended as set forth therein to one or more additional (*i.e.*, in addition to Merck Authorized Sites) sites controlled by Merck or a Merck Affiliate upon payment to XOMA of an additional one time, non-refundable fee of [*] United States Dollars (US$[*]) per site, beyond the Merck Authorized Sites.

4.4 Article 2 Product Milestone Payments. Merck shall pay to XOMA the applicable payments below (each, an "Article 2 Product Milestone Payment") only once if the corresponding milestones with regard to each Article 2 Product are satisfied:

Event	Payment
Initiation (i.e., dosing of a first human patient) of the first Phase I Trial	US$[*]
Initiation (i.e., dosing of a first human patient) of the first Phase III Trial	US$[*]
First Marketing Authorization	US$[*]

For the avoidance of doubt, for any Product sold only in the animal health field, Merck shall only pay the milestone fee due upon the first [*] for such Product.

4.5 Article 3 Product Milestone Payments. In addition to the Article 2 Product Milestone Payment payments set out in Section 4.4, Merck shall pay XOMA the following amounts (each, an "Article 3 Product Milestone Payment") only once if the corresponding milestones with regard to each Article 3 Product are satisfied:

Event	Payment
Initiation (i.e., dosing of a first human patient) of the first Phase I Trial	US$[*]

Event	Payment
Initiation (i.e., dosing of a first human patient) of the first Phase III Trial	US$[*]
First Marketing Authorization	US$[*]

For the avoidance of doubt, for any Product sold in the animal health field, Merck shall only pay the milestone fee due upon the first [*] for such Product.

4.6 Milestone Payments – General. Each Article 2 Product Milestone Payment and Article 3 Product Milestone Payment is payable only upon the initial achievement of each applicable milestone, and no amounts are due for subsequent or repeated achievement of such milestone by an Article 2 Product(s) or an Article 3 Product(s) containing the same Licensed Immunoglobulin. For the purpose of this Section 4.6, a Licensed Immunoglobulin(s) is the same if the binding characteristics of the Licensed Immunoglobulin(s) have not been materially altered through the practice of the XOMA Patent Rights, the XOMA Know-How or any composition of matter or article of manufacture claimed in the XOMA Patent Rights, or arising out of the use of XOMA Know-How.

An Article 2 and/or Article 3 Product Milestone Payment shall only be due under Sections 4.4 and 4.5 on Combination Products to the extent such Combination Products contain a Licensed Immunoglobulin for which the applicable milestone has not previously been achieved and paid.

4.7 Royalties. In consideration for the rights and licenses granted to Merck in this Agreement and for XOMA's performance of its obligations under this Agreement, upon the terms and conditions contained herein, Merck will pay to XOMA royalties on a Merck Product-by-Merck Product and country-by-country basis, as set forth in this Section 4.7:

(a) Subject to the provisions of this Agreement, Merck shall pay XOMA royalties in an amount equal to the following percentage of Net Sales of a Merck Product by Merck, Merck Affiliates or Merck Selling Entities, *provided* that the [*] of such Merck Product would have, but for the licenses granted in this Agreement, infringed a Valid Claim at the time of [*] and *provided further* that such Valid Claim constitutes a Valid Claim at the time of sale in the country of sale as follows:

(i) [*] percent ([*]%) of Net Sales of such Merck Product that is an Article 2 Product;

(ii) [*] percent ([*]%) of Net Sales of such Merck Product that is an Article 3 Product; or

(iii) [*] ([*]%) percent of Net Sales of such Merck Product that is an Article 2/Article 3 Product.

(b) [*]

(c) [*]

(d) [*].

(e) [*]

(f) Royalty Period. Royalties on a Merck Product at the applicable rate set forth in Section 4.7 (a), (b) or (c) shall begin in each country on the date of First Commercial Sale for such Merck Product and shall end as follows:

(i) With respect to each Article 2 Product, on the later of (x) the tenth anniversary of such First Commercial Sale date for such product in such country; or (y) the expiration of the last-to-expire Valid Claim in such country covering the [*] in such Article 2 Product.

(ii) With respect to each Article 3 Product, the later of (x) the tenth anniversary of such First Commercial Sale date for such product in such country; or (y) the expiration of the last-to-expire Valid Claim in such country covering the [*] in such Article 3 Product.

(iii) With respect to each Article 2/Article 3 Product, on the later of (x) the tenth anniversary of such First Commercial Sale date for such product in such country; or (y) the expiration of the last-to-expire Valid Claim in each country covering the [*] in such Article 2/Article 3 Product.

The parties acknowledge that the royalty rate payable by Merck may change during the life of a Merck Product in accordance with the provisions of Section 4.7 (a), (b), (c), (d) or (e). A change in royalty rates shall not affect the royalty periods as set forth above.

(g) If, prior to First Commercial Sale of a Merck Product, Merck pays to XOMA a single payment of [*] United States Dollars (US$[*]), then, at any time during the term of this Agreement, upon [*] days written notice, the applicable royalty rate hereunder for a total of [*] Merck Products of Merck's selection and designation shall thereafter be reduced by [*] percent ([*]%), *provided*, *however*, that the option to reduce the royalty obligation to XOMA provided for under this Section 4.7(g) shall expire on [*].

(h) All royalties are subject to the following conditions:

(i) that the royalty rates set forth in Sections 4.7(a), 4.7(b) and 4.7(c) are not cumulative and that only one royalty shall be due with respect to the same unit of Product;

(ii) that no royalties shall be due upon the sale or other transfer among Merck, a Merck Affiliate, a Merck Selling Entity or a Merck Collaborator; and

(iii) that no royalties shall accrue on the Disposition of Merck Product in reasonable quantities as samples (promotion or otherwise) or as donations (for

example, to non-profit institutions or government agencies for a non-commercial purpose).

4.8 Withholding Tax.

(a) Withholding of Tax. If applicable laws, rules or regulations require withholding of income or other taxes imposed upon any payments made by Merck to XOMA under Article 4, including without limitation any access, license, milestone, or royalty payments hereunder, Merck shall make such withholding payments as may be required and shall subtract such withholding payments from such payments; *provided, however*, that in regard to any tax so subtracted, Merck shall give or cause to be given to XOMA such assistance as may reasonably be necessary to enable XOMA to claim any available withholding exemptions, rate reductions and/or credits or refunds in respect of any withholding. If XOMA claims a reduced rate of withholding on such payments under any treaty with the United States, XOMA will provide Merck with a valid certificate of foreign status of beneficial owner for United States withholding (Form W-8BEN or any other form upon which a withholding agent may rely under the U.S. Treasury Regulations to treat the payment as made to a foreign beneficial owner) after which any subsequent payments will reflect such reduced rate. Merck shall submit appropriate proof of payment of the withholding taxes to XOMA within a reasonable period of time.

(b) Indemnification for Withholding Tax. XOMA shall indemnify and hold Merck and Merck Affiliates harmless from, and shall be entitled to any refund of, all withholding taxes imposed on Merck and Merck Affiliates in respect of payments made under Article 4. To be clear, such indemnification shall be required only with respect to withholding taxes imposed upon any payment made by Merck to XOMA under Article 4, and not previously withheld from XOMA, as the result of an assessment by a tax authority subsequent to such payment due to the nonapplicability of a tax treaty or other provision reducing such taxes. Notwithstanding the foregoing, XOMA shall not be required to indemnify or hold Merck or any Merck Affiliates harmless from any withholding taxes imposed on Merck and Merck Affiliates to the extent such taxes arise or result from actions by Merck or any Merck Affiliates constituting negligence, bad faith or willful misconduct or failures to act by Merck or any Merck Affiliates.

4.9 Payments; Currency. All payments due under this Article 4 shall be paid by wire transfer in United States dollars in immediately available funds to an account designated by XOMA. If any currency conversion shall be required in connection with the payment of any royalties hereunder, such conversion shall be made by using the exchange rate used by Merck in its worldwide accounting system for the calendar quarter to which such payments relate.

4.10 Payment Reports and Timing.

(a) Milestone Reports. Merck shall make a written report to XOMA within [*] days of the achievement of each of the milestones set forth in Sections 4.4 and 4.5 with respect to each Merck Product, stating in each such report the Merck Product to which such milestone relates and the specific milestone achieved, including for the Marketing Authorization milestone, the relevant agency or other regulatory body issuing such Marketing Authorization. Milestone payments required pursuant to Sections 4.4 and 4.5 shall be due and payable to XOMA within [*] days of the achievement of each of milestone.

(b) Royalty Reports. After the First Commercial Sale of a Merck Product on which royalties are required to be paid hereunder, Merck shall make quarterly written reports to XOMA within [*] days after the end of each calendar quarter, stating in each such report, [*], and aggregate Net Sales of each Merck Product sold during the calendar quarter. XOMA shall treat all such reports as Confidential Information of Merck. Royalties shown to have accrued by each royalty report shall be due and payable on [*]. Merck shall keep – and shall contractually require all Merck Selling Entities to keep — complete and accurate records in sufficient detail to enable the royalties payable under this Agreement to be determined.

4.11 Payment Records and Audits.

(a) Merck shall, and shall contractually require all Merck Selling Entities to, keep complete, true and accurate books of account for, and records of Net Sales of, Merck Product in sufficient detail to enable the royalties payable under this Agreement to be determined for at least [*] following the end of the calendar quarter after such Net Sales occur.

(b) Upon the written request of XOMA and not more than [*], Merck shall permit an internationally recognized auditor appointed by XOMA and reasonably acceptable to Merck to have access during normal business hours to such of the records of Merck as may be reasonably necessary to verify the accuracy of the royalty reports under this Agreement for [*] ending not more than [*] prior to the date of such request. The auditor shall only disclose to XOMA whether the royalty reports are correct or incorrect and the amount of any discrepancy. No other information shall be provided to XOMA without the prior consent of Merck unless disclosure is required by law, regulation or judicial order. If XOMA determines that disclosure is required by law, regulation or judicial order, it shall give Merck prior notice thereof reasonably sufficient for Merck to seek a protective order against or limiting such disclosure. Merck is entitled to require the auditor to execute a reasonable confidentiality agreement prior to commencing any such audit.

(c) Audits conducted under this Section 4.11 shall be at the expense of XOMA, unless an underpayment exceeding [*] United States Dollars ($[*]) and [*] percent ([*]%) of the amount stated for the full period covered by the audit is identified, in which case all reasonable out-of-pocket costs incurred by the auditor to perform the audit will be paid promptly by Merck. Any underpayments or unpaid amounts discovered by such inspections or otherwise will be paid promptly by Merck, [*]. In the event of an overpayment by Merck, Merck shall be entitled to a credit on any subsequent payment due to XOMA.

4.12 No Admission. Merck does not acknowledge or admit that the XOMA Patent Rights are valid or in-fringed, and this license agreement may not be used under any circumstances, whether in litigation or otherwise, as evidence of the validity or infringement of any of the XOMA Patent Rights or any claims thereof.

ARTICLE 5

CONFIDENTIALITY

5.1 Confidential Information. Except as expressly provided herein, the parties agree that, for the term of this Agreement and for [*] thereafter, the receiving party shall keep completely confidential and shall not publish or otherwise disclose and shall not use for any purpose except for the purposes contemplated by this Agreement any Confidential Information furnished to it by the disclosing party hereto, except to the extent that it can be established by the receiving party by written proof that such Confidential Information:

(a) was already known to the receiving party, other than under an obligation of confidentiality, at the time of disclosure, as documented by the receiving party's business records;

(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 other than through any act or omission of the receiving party in breach of this Agreement; or

(d) was subsequently developed by the receiving party without use of the Confidential Information as demonstrated by written records, or subsequently lawfully disclosed to the receiving party by a Third Party not under a confidentiality obligation to the disclosing party.

5.2 Permitted Use and Disclosures. Each party hereto may use or disclose Confidential Information disclosed to it by the other party to the extent such use or disclosure is reasonably necessary in complying with applicable law or government regulations; *provided*, *however*, that if a party is required to make any such disclosure of another party's Confidential Information, other than pursuant to a confidentiality agreement, it will give reasonable advance notice to the latter party of such disclosure. Attached hereto as Schedule 5.2 is a redacted copy of this Agreement which Merck shall be free, without obtaining any consent from XOMA, to provide to Third Parties who indicate an interest in becoming a Merck Collaborator.

5.3 Confidential Terms. Except as expressly provided herein, each party agrees not to disclose any terms of this Agreement to any Third Party without the consent of the other party; *provided*, that disclosures may be made as required by securities or other applicable laws, to a party's accountants, attorneys, other professional advisors or to a bona fide potential acquirer of either party or any actual or potential Merck Collaborators, all of whom agree to be bound by the terms of this Agreement with respect to such disclosures or who are otherwise subject to the requirements of confidentiality with respect to such disclosure at least as stringent as those required by this Agreement.

5.4 Agreement Announcement. The parties hereby agree to the release of a press release in the form attached hereto as Schedule 5.4 upon full execution of this Agreement and that

the fact of the consummation of this Agreement as well as such terms as are expressly described in such press release, but not its financial or other terms, shall be deemed to be in the public domain.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties.

(a) XOMA represents and warrants to Merck that: (i) it is the sole and exclusive owner or exclusive licensee of all right, title and interest in the XOMA Patent Rights and XOMA Know-How; (ii) XOMA has the legal right, authority and power to enter into this Agreement; (iii) this Agreement shall constitute a valid and binding obligation of XOMA enforceable in accordance with its terms; and (iv) the performance of obligations under this Agreement by XOMA shall not result in a breach of any agreements, contracts or other arrangements to which it is a party.

(b) Merck represents and warrants to XOMA that: (i) Merck has the legal right, authority and power to enter into this Agreement; (ii) this Agreement shall constitute a valid and binding obligation of Merck enforceable in accordance with its terms; (iii) the performance of obligations under this Agreement by Merck shall not result in a breach of any agreements, contracts or other arrangements to which it is a party; and (iv) it is not engaged in a [*].

6.2 Disclaimer. Nothing in this Agreement is or shall be construed as:

(a) a warranty or representation by XOMA as to the validity or scope of any claim or patent within the XOMA Patent Rights;

(b) a warranty or representation that anything made, used, sold, or otherwise Disposed of under any license granted in this Agreement is or will be free from infringement of any patent rights or other intellectual property right of any Third Party;

(c) an obligation to bring or prosecute actions or suits against Third Parties for infringement of any of the XOMA Patent Rights or misappropriation of the XOMA Know-How;

(d) a grant of any right or license under any claim of any patent or patent application which covers a specific Immunoglobulin, polypeptide or any method of diagnosing, preventing, treating any disease or condition;

(e) an obligation to maintain any patent or to continue to prosecute any patent application included within the XOMA Patent Rights in any country; or

(f) an admission, acceptance, acknowledgment, statement, declaration or representation by either party as to the infringement, validity or scope of any claim or patent within the XOMA Patents.

6.3 No Other Warranties. EXCEPT AS OTHERWISE SET FORTH IN SECTION 6.1 ABOVE, XOMA MAKES NO WARRANTIES WITH RESPECT TO ANY OF THE XOMA PATENT RIGHTS OR XOMA KNOW-HOW LICENSED HEREUNDER, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, AND XOMA SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF VALIDITY OF SUCH XOMA PATENT RIGHTS AND XOMA KNOW-HOW ARISING FROM COURSE OF DEALING OR OF NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

ARTICLE 7

INDEMNIFICATION

7.1 Indemnification of XOMA by Merck. Merck agrees to indemnify, defend and hold XOMA, its Affiliates, and their respective directors, officers, employees and agents (the "XOMA Indemnified Parties") harmless from and against any and all liabilities, losses and expenses (including, without limitation, reasonable attorneys and professional fees and other costs of litigation), resulting from any claims, demands or causes of action brought by any Third Party (each, a "XOMA Liability") to the extent arising out of (i) the possession, manufacture, use, sale or other Disposition of Merck Product, Licensed Antibody Expression Materials, Licensed Immunoglobulins or the provision of any service or goods relating thereto by Merck or Merck Affiliates, or any customer, vendor or other representative of Merck or a Merck Affiliate, whether based on breach of warranty, negligence, product liability or otherwise, or (ii) the exercise of any right granted to Merck pursuant to this Agreement, and to each Merck Affiliate who obtains or claims a right or license under this Agreement, except to the extent, in each case, that such XOMA Liability is caused by the negligence or willful misconduct of a XOMA Indemnified Party.

7.2 Procedure. To receive the benefit of indemnification under Section 7.1, a XOMA Indemnified Party must (a) promptly notify Merck in writing of a claim or suit; *provided*, that failure to give such notice shall not relieve Merck of its indemnification obligations except where, and solely to the extent that, such failure actually and materially prejudices the rights of Merck; (b) provide reasonable cooperation (at Merck's expense); and (c) tender to Merck (and its insurer) full authority to defend or settle the claim or suit; *provided* that no settlement requiring any admission by the XOMA Indemnified Party or that imposes any obligation on the XOMA Indemnified Party (except payment of money to be paid by Merck) shall be made without the XOMA Indemnified Party's consent. Merck shall not have any obligation to indemnify XOMA in connection with any settlement made without Merck's written consent. Each XOMA Indemnified Party has the right to participate at its own expense in the claim or suit and in selecting counsel therefor. Each XOMA Indemnified Party shall cooperate with Merck (and its insurer), as reasonably requested.

ARTICLE 8

TERM AND TERMINATION

8.1 Term. Subject to Sections 8.5 and 8.6 hereof, the term of this Agreement will commence on the Effective Date and shall remain in full force and effect until the last to expire of the XOMA Patent Rights or the tenth anniversary of the First Commercial Sale of any Merck Product, whichever is later, unless earlier terminated pursuant to Section 8.2, 8.3 or 8.4. Upon such expiration, Merck shall have a fully paid-up, royalty-free right and license to continue to use the XOMA Know-How as permitted by Article 2, and Article 3, if applicable.

8.2 Termination for Material Breach.

(a) This Agreement may be terminated by the non-breaching party if the other party is in breach of its material obligations under this Agreement and after receiving notice describing such breach in reasonable detail and requesting its cure has not cured such breach within [*] business days (in the case of a payment breach) or [*] (in the case of a non-payment breach). Notwithstanding the foregoing sentence of this Section 8.2: (a) if such breach is cured or shown to be non-existent within the aforesaid [*] days or [*] day period, the notice shall be deemed automatically withdrawn and of no effect and the notifying party shall provide written notice to the breaching party of the withdrawal; and (b) without limiting the effects of Section 2.7 and the following sentence of this Section 8.2(a), in the event of a good faith dispute with respect to the existence of a material breach, the [*] day or [*] day cure period shall be tolled until such time as the dispute is resolved pursuant to Section 9.12. For the avoidance of doubt, XOMA shall be entitled to terminate the licenses granted under this Agreement on [*] days notice if Merck or any Merck Affiliate [*], *provided, however* that in the event of a good faith dispute with respect to whether Merck or a Merck Affiliate has entered into a [*], such [*] day cure period shall be tolled until such time as the dispute is resolved pursuant to Section 9.12, *provided, further, however,* that in the event the arbitral panel decides in accordance with Section 9.12 that Merck or such Merck Affiliate has entered into a [*] and XOMA subsequently terminates the licenses granted under this Agreement as provided in this Section 8.2(a), such termination shall be retroactive to, and the licenses granted under this Agreement shall be void as of, the date on which Merck or such Merck Affiliate, as the case may be, first entered into a [*]. Such termination right shall not apply to the extent Merck [*].

(b) With respect to Merck Collaborators as of the date of a termination by XOMA of this Agreement due to a material breach by Merck, any such termination shall be effective against each such Merck Collaborator unless, within [*] days after written notice from XOMA of such termination, such Merck Collaborator executes a written agreement with XOMA directly obligating such Merck Collaborator to comply with all of the provisions of this Agreement applicable to such Merck Collaborator with respect to any and all compositions of matter or articles of manufacture subject thereto as of the date of such termination. The licenses and other rights granted hereunder shall continue with respect to such Merck Collaborators, subject to such agreement and subject to all payments payable hereunder with respect to such compositions of matter or articles of manufacture. Upon any termination under this Section 8.2 by XOMA, Merck shall promptly (and in any event not later than [*] days thereafter) deliver to XOMA a

written report specifying as of the date of such termination the information required by Section 2.6(a).

8.3 Termination for Insolvency. If voluntary or involuntary proceedings by or against either party are instituted in bankruptcy under any insolvency law, or a receiver or custodian is appointed for either party, or proceedings are instituted by or against either party for corporate reorganization or the dissolution of such party, which proceedings, if involuntary, shall not have been dismissed within [*] days after the date of filing, or if either party makes an assignment for the benefit of creditors, or substantially all of the assets of either party are seized or attached and not released within [*] days thereafter, the other party may immediately terminate this Agreement effective upon notice of such termination.

8.4 Contested Validity. If Merck, a Merck Collaborator or any person or entity controlled by any of the foregoing contests the validity or enforceability of any of the XOMA Patent Rights licensed hereunder, XOMA shall have the right to terminate all of the rights and licenses hereby granted to Merck and any Merck Collaborator under the XOMA Patent Rights upon [*] advance written notice from XOMA; *provided*, *however*, that in the event a Merck Collaborator contests the validity or enforceability of any of the XOMA Patent Rights licensed hereunder other than at the direction, and without the knowing assistance, of Merck, then the foregoing termination right of XOMA shall apply only to the rights hereby granted to such Merck Collaborator; and *provided further*, that such termination shall not be effective if within [*] of its receipt of written notice from XOMA of such termination, such Merck Collaborator enters into an agreement with XOMA under which the Merck Collaborator agrees to comply with all provisions of this Agreement applicable to Merck Collaborators.

8.5 Effect of Termination.

(a) Termination of this Agreement shall not release either party hereto from any liability which, at the time of such termination, has already accrued to the other party or which is attributable to a period prior to such termination nor preclude either party from pursuing any rights and remedies it may have hereunder or at law or in equity with respect to any breach of this Agreement.

(b) Upon any termination of this Agreement, Merck and XOMA shall promptly return to the other party all Confidential Information received from the other party (except that each party may retain one copy for its files solely for the purpose of determining its rights and obligations hereunder), except that Merck shall not be required to return to XOMA Confidential Information received from XOMA in the case of a termination for XOMA's material breach.

(c) Except as expressly provided in Sections 8.1 and 8.2, all licenses and rights granted under Articles 2 and 3 hereof shall terminate and be of no further effect upon the termination of this Agreement, *provided*, *however*, that in the event that Merck terminates this Agreement for XOMA's material breach, then (i) Merck's rights and licenses under Articles 2 and 3 shall survive together with Merck's obligation to pay appropriate milestones under Sections 4.4 and 4.5, royalties owed pursuant to Section 4.7 (a), and any payments owed pursuant to Section 9.3; (ii) all of XOMA's other rights under this Agreement shall terminate as of such termination date; (iii) Merck, except with respect to Sections 2.5, 2.6(a), 3.2 and 4.9 [*], shall have

no further obligations to XOMA under this Agreement; and (iv) Merck shall be entitled to set off any damages caused by XOMA's breach giving rise to termination against any payments owed by Merck under this Agreement.

8.6 Survival. Sections 2.6(c), 2.8, 2.9, 4.11, 4.12, 8.2(b), 8.5 and 8.6, and Articles 1, 5, 6, 7 and 9, of this Agreement shall survive any termination hereof.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Governing Law. This Agreement and any dispute, including, without limitation, any arbitration, arising from the performance or breach hereof shall be governed by and construed and enforced in accordance with the laws of the State of New York, without reference to conflicts of laws principles.

9.2 Assignment. Neither party may transfer or assign this Agreement, directly or indirectly, or any of its rights hereunder without the prior written consent of the other party, other than (a) to one or more Affiliates, (b) to a successor of XOMA Ltd. or XOMA under a Change in Control of XOMA Ltd. or to a successor of Merck under a Change in Control of Merck to which Section 9.3 does not apply, or (c) to a Third Party in connection with the transfer or sale of all or substantially all or its business relating to [*] and the provision of related services (other than with respect to such a transfer or sale by Merck to any person or entity described in Section 9.3). Any such attempted transfer or assignment in violation of this Section 9.2 shall be void; *provided*, that in the event of a permitted Change in Control, the original party's (or its successor's) obligations hereunder shall continue. This Agreement shall be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

9.3 Certain Acquisitions, Licenses and Changes in Control.

(a) In the event of a transaction or series of related transactions to which Merck or an Affiliate of Merck is a party and which results in either an entity that is not an Affiliate of Merck as of the Effective Date becoming an Affiliate of Merck or the acquisition or control by Merck or an Affiliate of Merck of an operating unit or other substantial amount of assets of an entity that is not an Affiliate of Merck as of the Effective Date, then, effective as of the closing date of such transaction or series of related transactions (the "Closing") and solely with respect to such new Affiliate of Merck or the entity through which Merck or an Affiliate of Merck acquires or controls such operating unit or assets (the "Acquisition Entity"), such Acquisition Entity shall, subject to the other terms and conditions of this Agreement, be deemed to be a Merck Affiliate and enjoy all of the rights and licenses otherwise enjoyed by Merck and the Merck Affiliates; *provided, however*, that:

(i) if such Acquisition Entity is engaged or was engaged in a [*], after a reasonable period of time, Merck shall either:

(x) hold such Acquisition Entity as a separate entity and such Acquisition Entity shall not enjoy the rights and licenses enjoyed by Merck and its Affiliates under

this Agreement and no license or grant of rights shall be deemed to have been granted prospectively or retrospectively with respect to such entity; or

(y) cause such Acquisition Entity to cease all activities constituting [*] and, upon such cessation, such Acquisition Entity shall be deemed to be a Merck Affiliate;

(ii) any infringement or unauthorized use of the XOMA Patent Rights or, if applicable, the XOMA Know-How, by the Acquisition Entity before the Closing shall not be deemed to be released or waived; and

(iii) any composition of matter or article of manufacture, including any Immunoglobulin, other than as provided for by the immediately following sentence of this Section 9.3(a), shall not be licensed under any patent or patent application owned or controlled by XOMA, including, without limitation, the XOMA Patent Rights, and any claims of infringement or unauthorized use of such patent or patent application shall not be deemed to have been released or waived. For the avoidance of doubt, it is understood that any composition of matter or article of manufacture which after the Closing, other than with respect to its creation, otherwise meets the definition of Licensed Antibody Expression Materials or Merck Antibody Phage Display Materials shall, after such Closing and to the extent the other conditions of this Agreement are met, be deemed to be Licensed Antibody Expression Materials or Merck Antibody Phage Display Materials, as the case may be.

(b) In the event that Merck or any Affiliate of Merck, after the Effective Date, obtains by acquisition of an Acquisition Entity as provided in Section 9.3(a) Control of one or more Immunoglobulins discovered, made, used, sold, offered for sale or imported under conditions which utilized or involved the practice of the XOMA Patent Rights (all such Immunoglobulins together with their back-ups (i.e. a reasonable number of Immunoglobulins existing as of the date of the Acquisition that principally bind to the same target), "Acquired Immunoglobulins"), then each such Acquired Immunoglobulin shall be treated, as of the date of the payment of the applicable fee described herein, as if it were a Licensed Immunoglobulin under this Agreement (x) immediately if the Acquisition Entity was licensed under the XOMA Patent Rights; or (y) upon the satisfaction of the other requirements of this Section 9.3(b). Unless the Acquisition Entity was licensed under the XOMA Patent Rights, in order for Merck or its Affiliates to obtain the benefit of this Section 9.3(b), [*]. Simultaneously with the delivery of the written notice provided for by this Section 9.3(b), [*] at Closing [*] of such Acquired Immunoglobulin(s), Merck shall pay, for each Acquisition Entity as to which Merck seeks the benefit of this Section 9.3(b), a one-time fee covering all Acquired Immunoglobulins (a "Release Fee") provided for in the following table:

[*] Acquired Immunoglobulin at Closing	**Release Fee**
[*]	US$[*]
[*]	US$[*]

[*] Acquired Immunoglobulin at Closing	Release Fee
[*]	US$[*]
[*]	US$[*]

Notwithstanding the foregoing, in the event an Acquisition Entity's principal asset is a single Immunoglobulin, then the applicable Release Fee required by this Section 9.3(b) shall be determined using the table set forth in Section 9.3(c) but the provisions of this Section 9.3(b) shall otherwise apply in their entirety.

(c) In the event that Merck or any Affiliate of Merck, after the Effective Date, obtains, by asset purchase, exclusive license or acquisition of an entity as to which the Release Fee provided for in Section 9.3(b) has not been paid, Control of an Acquired Immunoglobulin not otherwise licensed under the XOMA Patent Rights, and if the other requirements of this Section 9.3(c) are satisfied, then such Acquired Immunoglobulin shall be treated, as of the date of the payment of the applicable fee described herein, as if it were a Licensed Immunoglobulin under this Agreement. In order for Merck or its Affiliates to obtain the benefit of this Section 9.3(c), Merck must, within [*] days of the date of obtaining Control of such Acquired Immunoglobulin, provide written notice to XOMA specifying the identity of the Acquired Immunoglobulin, [*]. Simultaneously with the delivery of the written notice provided for by this Section 9.3(c), [*] of the Acquired Immunoglobulin, Merck shall pay, for each Acquired Immunoglobulin as to which Merck seeks the benefit of this Section 9.3(c), the Release Fee provided for in the following table:

[*]	Release Fee
[*]	US$[*]
[*]	US$[*]
[*]	US$[*]
[*]	US$[*]

Notwithstanding the foregoing provisions of this Section 9.3(c), in the event Merck or an Affiliate of Merck obtains complete Control of more than one Acquired Immunoglobulin in a single transaction or series of related transactions, then in lieu of complying with the provisions of this Section 9.3(c) for each such Acquired Immunoglobulin, Merck or such Affiliate of Merck may instead elect to treat all such Acquired Immunoglobulins as if they had been obtained through the acquisition of an Acquisition Entity and comply with the provisions of Section 9.3(b), which will thereby apply to all such Acquired Immunoglobulins.

(d) Upon receipt of the applicable fee in accordance with Section 9.3(b) or Section 9.3(c), as applicable, XOMA shall acknowledge in writing receipt of such payment and that the

identified Acquired Immunoglobulin(s) shall, as of that date, be treated as Licensed Immunoglobulin(s) for all purposes under this Agreement. For each Acquired Immunoglobulin as to which the applicable notice is given and the applicable payment is made, it is understood that (i) the rights granted to Merck or its Affiliates hereunder do not release or waive any claim XOMA may have against any Third Party from whom Merck or its Affiliates obtained such Acquired Immunoglobulin (other than, where Section 9.3(b) applies and has been complied with, the relevant Acquisition Entity) or any person or entity acting in concert therewith; and (ii) all of the other rights and obligations of this Agreement, including, without limitation, those provided for in Article 4, shall apply to such Acquired Immunoglobulin as if Merck or its Affiliates, after the Effective Date, had [*], as applicable, such Acquired Immunoglobulin.

9.4 Waiver. No waiver of any rights shall be effective unless consented to in writing by the party to be charged and the waiver of any breach or default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

9.5 Severability. In the event that any provisions of this Agreement are determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect without said provision.

9.6 Notices. All notices, requests and other communications hereunder shall be in writing and shall be delivered or sent in each case to the respective address specified below, or such other address as may be specified in writing to the other party hereto, and shall be effective on receipt:

Merck:
Merck & Co., Inc.
One Merck Drive
P.O. Box 100 [*]
Whitehouse Station, NJ 08889
U.S.A.
Attn: [*]
Fax No: [*]

and
Merck & Co., Inc.
One Merck Drive
P.O. Box 100 [*]
Whitehouse Station, NJ 08889-0100
Attn: [*]
Fax No: [*]

XOMA:
XOMA Ireland Limited
Shannon Airport House
Shannon, County Clare
Ireland
Attn: Company Secretary

with a copy (which shall not constitute notice) to:

Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005
U.S.A.
Attn: Geoffrey E. Liebmann

9.7 Independent Contractors. Both parties are independent contractors under this Agreement. Nothing contained in this Agreement is intended nor is to be construed so as to constitute XOMA or Merck as partners or joint venturers with respect to this Agreement. Except as expressly provided herein, neither party shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other party or to bind the other party to any other contract, agreement, or undertaking with any Third Party.

9.8 Compliance with Laws. In exercising their rights under this license, the parties shall comply in all material respects with the requirements of any and all applicable laws, regulations, rules and orders of any governmental body having jurisdiction over the exercise of rights under this Agreement.

9.9 Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by one party to the other are, for all purposes of Section 365(n) of Title XI of the United States Code ("Title XI"), licenses of rights to "intellectual property" as defined in Title XI. During the term of this Agreement each party shall create and maintain current copies to the extent practicable of all such intellectual property. If a bankruptcy proceeding is commenced by or against one party under Title XI, the other party shall be entitled to a copy of any and all such intellectual property and all embodiments of such intellectual property, and the same, if not in the possession of such other party, shall be promptly delivered to it (a) upon such party's written request following the commencement of such bankruptcy proceeding, unless the party subject to such bankruptcy proceeding, or its trustee or receiver, elects within [*] to continue to perform all of its obligations under this Agreement, or (b) if not delivered as provided under clause (a) above, upon such other party's request following the rejection of this Agreement by or on behalf of the party subject to such bankruptcy proceeding. If a party has taken possession of all applicable embodiments of the intellectual property of the other party pursuant to this Section 9.9 and the trustee in bankruptcy of the other party does not reject this Agreement, the party in possession of such intellectual property shall return such embodiments upon request. If a party seeks or involuntarily is placed under Title XI and the trustee rejects this Agreement as contemplated under 11 U.S.C. 365(n)(1), the other party hereby elects, pursuant to Section 365(n) of Title XI, to retain all rights granted to it under this Agreement to the extent permitted by law.

9.10 Use of Name. Neither party shall use the name or trademarks of the other party, except to the extent that a party is permitted to use the Confidential Information of the other party pursuant to Article 5, without the prior written consent of such other party.

9.11 Further Actions. Each party agrees to execute, acknowledge and deliver such further instruments, and do such other acts, as may be necessary in order to carry out the purposes and intent of this Agreement.

9.12 Arbitration.

(a) Solely with respect to any dispute between the parties (other than any dispute which arises out of or relates to infringement, validity and/or enforceability of the XOMA Patent Rights) the parties shall negotiate in good faith and use reasonable efforts to resolve any such dispute. In the event that the parties, within [*] days do not fully resolve any such dispute, then either party may declare an impasse and initiate arbitration by giving notice to that effect to the other party and by filing the notice with the American Arbitration Association or its successor organization ("AAA") in accordance with its Commercial Arbitration Rules, to which shall be added the provisions of the U.S. Federal Rules of Civil Procedure relating to the production of evidence and discovery. Such dispute shall then be settled by arbitration in New York, in accordance with the Commercial Arbitration Rules of the AAA or other rules agreed to by the parties, by a panel of three (3) neutral arbitrators experienced in the pharmaceutical business. Within [*] days after notice of initiation of arbitration, each party shall select one person to act as arbitrator and the two party-selected arbitrators shall select a third arbitrator (who shall be a neutral arbitrator who is an attorney with at least ten (10) years experience in the pharmaceutical field) 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 AAA.

(b) The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Insofar as it applies, the United States Arbitration Act shall govern the interpretation of, enforcement of, and proceedings pursuant to the arbitration clause in this Agreement. Except insofar as the United States Arbitration Act applies to such matters, the agreement to arbitrate set forth in this Section 9.12 shall be construed, and the legal relations among the parties shall be determined in accordance with, the substantive laws of the State of New York. In addition, the arbitrators shall, with respect to the matter of legal interpretation of this Agreement, be bound by and subject to the relevant decisional law as determined by the Federal and state courts of New York, and the parties agree that the arbitrators may impose sanctions in their discretion to enforce compliance with discovery and other obligations.

(c) The panel shall render its decision and award, including a statement of reasons upon which such award is based, within [*] days after the arbitration hearing. The decision of the panel shall be determined by majority vote among the arbitrators, shall be in writing and shall be binding upon the parties, final and non-appealable. Judgment upon the award rendered by the panel may be entered in any court having jurisdiction thereof in accordance with Section 9.13(a).

(d) Except as provided under the United States Arbitration Act and with respect to the infringement, validity and/or enforceability of the XOMA Patent Rights, no action at law or in equity based upon any dispute that is subject to arbitration under this Section 9.12 shall be instituted.

(e) 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.

(f) 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 [*].

(g) The arbitrators shall have no authority to award punitive or any other type of damages not measured by a party's compensatory damages.

(h) Except to the extent necessary to confirm an award or as may be required by law, neither a party nor an 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 New York statute of limitations.

9.13 Venue; Jurisdiction.

(a) Any action or proceeding brought by either party seeking to enforce any provision of, or based on any right arising out of, this Agreement must be brought against either party in the courts of the State of New York. Each party (i) hereby irrevocably submits to the jurisdiction of the state courts of the State of New York and to the jurisdiction of any United States District Court in the State of New York, for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement or the subject matter hereof brought by any party or its successors or assigns, (ii) hereby waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action, or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (iii) hereby waives and agrees not to seek any review by any court of any other jurisdiction that may be called upon to grant an enforcement of the judgment of any such New York state or federal court.

(b) Process in any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement may be served on any party anywhere in the world. Each party consents to service of process by registered mail at the address to which notices are to be given pursuant to Section 9.6. Nothing herein shall affect the right of a party to serve process in any other manner permitted by applicable law. Each party further agrees that final judgment against it in any such action or proceeding arising out of or relating to this Agreement shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its liability.

(c) Each party agrees that it shall not, and that it shall instruct those in its control not to, take any action to frustrate or prevent the enforcement of any writ, decree, final judgment, award (arbitral or otherwise) or order entered against it with respect to this Agreement, and shall agree to be bound thereby as if issued or executed by a competent judicial tribunal having personal jurisdiction situated in its country of residence or domicile.

9.14 Force Majeure. Neither party shall be liable for failure of or delay in performing its obligations set forth in this Agreement, and neither shall be deemed in breach of its

obligations, if such failure or delay is due to natural disasters or any causes beyond the reasonable control of such party. In the event of such force majeure, the party affected thereby shall use reasonable efforts to cure or overcome the same and resume performance of its obligations hereunder.

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

9.16 Entire Agreement; Amendment. This Agreement constitutes the entire and exclusive Agreement between the parties with respect to the subject matter hereof and supersedes and cancels all previous discussions, agreements, commitments and writings in respect thereof. No amendment or addition to this Agreement shall be effective unless reduced to writing and executed by the authorized representatives of the parties.

IN WITNESS WHEREOF, XOMA and Merck have executed this Agreement in duplicate originals by duly authorized officers.

MERCK & CO., INC.

By: /s/ JUDY C. LEWENT
Name: Judy C. Lewent
Title: EVP & CFO
Pres., Human Health Asia

XOMA IRELAND LIMITED

By: /s/ ALAN KANE
Alan Kane, Director
duly authorized for and on behalf of
XOMA Ireland Limited in the presence of:

/S/ GEOFFREY LIEBMANN

SCHEDULE 1.17

Existing Merck Collaborators

[*]

SCHEDULE 1.41

[*]

SCHEDULE 2.4

Materials to be Transferred Pursuant to Section 2.4

[*]

SCHEDULE 2.5

Form of Notice

XOMA owns a number of patents covering various aspects of bacterial antibody expression and phage display.

XOMA has licensed these patents on a non-exclusive basis to Merck.

Under the license agreement with XOMA:

- Merck cannot provide materials, products or information to you without first showing you a redacted copy of its license from XOMA and this notice.
- If you and Merck enter into a written agreement by which you become a "Merck Collaborator", then you will be permitted to use Merck services and related products and information to research, develop and commercialize antibody products.
- Merck Collaborators do not, however, have the right to produce commercial quantities of such antibodies using XOMA's patented technology. Rather, Merck Collaborators only have the right to make research and development quantities of antibodies using the XOMA patent rights. Thereafter, unless a Merck Collaborator obtains a commercial production license from XOMA (which may be available), such Merck Collaborator must produce commercial quantities of antibodies using a method that does not infringe XOMA patent rights.
- Therefore, if you and Merck enter into a written agreement, that agreement must contain certain provisions specified in the license agreement with XOMA, including:
    - Terms pursuant to which you, as the recipient of any transferred materials, would agree to abide by each of the limitations, restrictions and other obligations provided for by the license agreement with XOMA, including, without limitation, the restrictions on use of such transferred materials for purposes other than research and development.
    - A covenant not to use transferred materials for any purpose other than for research and development purposes otherwise authorized by the license agreement with XOMA.
    - An agreement by you to further dispose of transferred materials to a third party who otherwise meets the definition of a "Merck Collaborator" set forth in the license agreement with XOMA only if such third party executes a written agreement in which it undertakes all of the obligations applied to the transferring party.

SCHEDULE 3.3

Materials to be Transferred Pursuant to Section 3.3

[*]

SCHEDULE 5.2

Redacted Copy of this Agreement

[*]

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 L. Castello, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XOMA Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2005

/s/ JOHN L. CASTELLO

John L. Castello
Chairman of the Board, President and
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, J. David Boyle II, certify that:

1. I have reviewed this quarterly report on Form 10-Q of XOMA Ltd.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f))) for the registrant and we have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 8, 2005

/s/ J. DAVID BOYLE II

J. David Boyle II
Vice President, Finance and
Chief Financial Officer

Exhibit 32.1

Certification
Pursuant to Section 906 Of The Sarbanes-Oxley Act Of 2002
(Chapter 63, Title 18 U.S.C. Section 1350(A) And (B))

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Chapter 63, Title 18 U.S.C. Section 1350(a) and (b)), the undersigned hereby certifies in his capacity as an officer of XOMA Ltd. (the "Company") that the Quarterly Report of the Company on Form 10-Q for the period ended June 30, 2005, 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: August 8, 2005

/s/ JOHN L. CASTELLO
John L. Castello
Chairman of the Board, President and
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 Ltd. (the "Company") that the Quarterly Report of the Company on Form 10-Q for the period ended June 30, 2005, 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: August 8, 2005

/s/ J. David Boyle II

J. David Boyle II
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

News Release

Ellen M Martin
Kureczka/Martin Associates
Investor Relations
Tel: (510) 832-2044

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Media Relations
Tel: (510) 204-7240

XOMA Reports Second Quarter 2005 Financial Results

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Revenue Increases and Expenses Decreased

Berkeley, CA – August 8, 2005 — XOMA Ltd. (Nasdaq: XOMA), a biopharmaceutical company developing antibody and protein-based drugs for cancer, immunological disorders and infectious diseases, today announced its financial results for the quarter and half-year ended June 30, 2005.

For the second quarter of 2005, the Company reported a net loss of ($8.6) million or ($0.10) per share on a fully diluted basis, compared with a net loss of ($21.0) million or ($0.25) per share in the second quarter of 2004. These results reflect higher revenues, reduced research and development expenses and elimination of losses from the RAPTIVA® collaboration agreement with Genentech, Inc. (NYSE: DNA) that was restructured in January of 2005.

For the first half of 2005, XOMA recorded net income of $21.5 million or $0.20 per share (fully diluted), a figure that includes a non-recurring gain of $40.9 million, recognizing the extinguishment of a long-term loan due to Genentech as part of the restructuring.

As of June 30, 2005, XOMA held $55.8 million in cash and cash equivalents, compared with $23.8 million at December 31, 2004, primarily as a result of a financing completed in February of 2005. A more detailed discussion of XOMA's financial results is provided below and in XOMA's second quarter 2005 Form 10-Q filing.

"We are pleased with our progress in the second quarter," said David Boyle, XOMA's chief financial officer. "Increased revenues, reduced spending levels and a decreasing burn rate reflect continued execution of our business strategy."

Second quarter 2005 highlights

- As disclosed by Genentech on July 11th, RAPTIVA® sales for the United States increased 59% to $21.3 million compared to $13.4 million in the second quarter of 2004. International sales for the second quarter of 2005 increased to $7.4 million as disclosed by Serono S.A. (virt-x: SEO and NYSE: SRA) on July 19th. XOMA is entitled to a royalty on worldwide sales of RAPTIVA® in all indications.
- Genentech also disclosed that a Phase II study of RAPTIVA® in adults with atopic dermatitis is scheduled to start in the fourth quarter of 2005.
- Merck & Co., Inc. (NYSE: MRK) was granted a non-exclusive worldwide license to XOMA's bacterial cell expression system, bringing the total number of such licenses to approximately 35 companies. Two products subject to licenses granted earlier have now reached late-stage clinical testing, and if approved and successfully marketed, will entitle XOMA to royalties.
- XOMA and Lexicon Genetics, Inc. (Nasdaq: LEXG) formed a collaboration to jointly develop and commercialize antibody drugs for certain targets discovered by Lexicon. The initial target

of the collaboration has been selected, a secreted protein involved in metabolic functions such as weight gain in response to diet and insulin insensitivity.

- XOMA and Chiron Corporation (Nasdaq: CHIR) advanced Phase I clinical testing of CHIR-12.12, a fully human, anti-CD40 antibody in subjects with advanced chronic lymphocytic leukemia ("CLL"). XOMA and Chiron plan to start a Phase I study of 12.12 in multiple myeloma patients later in 2005.
- XOMA regained control of BPI and NEUPREX® by terminating its license agreement with Zephyr Sciences, Inc. (Zephyr).
- David Boyle became chief financial officer upon the retirement of Peter Davis.

"A cornerstone of our business strategy is leveraging XOMA's antibody development platform to attract partners with complimentary target discovery capabilities," said John L. Castello, president, chairman and CEO of XOMA. "This gives us a bigger pool of potential products and enables us to be more selective about those we bring forward. The new collaboration with Lexicon is the latest agreement under this strategy, a multiple-antibody partnership that focuses XOMA's antibody generation platform initially at a large and rapidly growing medical target, metabolic disease."

Financial Discussion

Revenues

Revenues for the three months ended June 30, 2005 were $5.2 million, compared with $0.78 million for the three months ended June 30, 2004. Revenues for the first half of 2005 increased to $8.2 million from $0.95 million in the first half of 2004.

License and collaborative fee revenues increased to $2.7 million in the second quarter, compared with $0.76 million for the same period of 2004. These include upfront and milestone payments related to the outlicensing of our products and technologies and other collaborative arrangements. The increase resulted primarily from a license agreement with Merck.

Contract revenues increased to $0.93 million for the 2005 quarter, compared with zero in the first quarter of 2004, primarily due to clinical trial services performed on behalf of Genentech and recognition of revenues for contract manufacturing services performed under the NIAID contract that began in March of 2005.

Royalties recorded for the three months ended June 30, 2005 increased to $1.6 million, compared with $21,000 for the 2004 quarter, primarily reflecting RAPTIVA® royalties earned under the restructured arrangement with Genentech. Beginning on January 1, 2005, XOMA earns a mid-single digit royalty on sales of RAPTIVA® worldwide.

Revenues for the next several years will be largely determined by the timing and extent of royalties generated by worldwide sales of RAPTIVA® and by the establishment and nature of future manufacturing, outlicense and collaboration arrangements.

Expenses

Research and development expenses for the three months ended June 30, 2005 decreased to $9.5 million from $12.9 million for the second quarter of 2004. This reflects reduced spending on MLN2222, XMP.629, RAPTIVA®, TPO-mimetic and new product research partially offset by increased spending on the Chiron oncology and Aphton anti-gastrin antibody collaborations and

the NIAID contract. General and administrative expenses remained essentially flat for the second quarter and first half of 2005 as compared with the same periods in 2004.

Collaborative arrangement expenses, which related exclusively to RAPTIVA®, were zero and $5.2 million for the three months ended June 30, 2005 and 2004, respectively. The 2004 amount represents XOMA's 25% share of commercialization costs for RAPTIVA® in excess of Genentech's revenues less cost of goods sold and research and development cost sharing arrangements. Under the restructured arrangement with Genentech, effective January 1, 2005, XOMA is no longer responsible for a share of operating costs or R&D expenses, but receives royalties on worldwide sales. Genentech is responsible for all development costs and will compensate XOMA for any development support for RAPTIVA®.

Long-term Debt

At December 31, 2004, XOMA's balance sheet reflected a $40.9 million long-term note due to Genentech, which was extinguished under the restructuring of the Genentech agreement announced in January 2005.

In February of 2005, XOMA issued $60 million of 6.5% convertible senior notes due in 2012, which is shown on the June 30, 2005 balance sheet as convertible long-term debt.

Under its collaborative arrangement with XOMA, Chiron has made available a $50.0 million credit facility under which XOMA can receive financing for up to 75% of its share of development expenses. In June of 2005, XOMA drew an initial $8.8 million down under this facility.

Liquidity and Capital Resources

Cash, cash equivalents and short-term investments at June 30, 2005 were $55.8 million, compared with $24.3 million at December 31, 2004. The $31.5 million increase primarily reflects cash proceeds of $56.6 million from the February 2005 financing and a June 2005 drawdown of $8.8 million under the Chiron loan, partially offset by cash used in operations of $32.3 million. Cash used in operations for the six months ending June 30, 2005 include a $13.7 million decrease in accrued liabilities and a $3.8 million increase in accounts receivables.

Rule 10b5-1 Plans

XOMA also announced that up to four of its outside directors and five members of its senior management, including its chief executive officer, may adopt prearranged trading plans in accordance with guidelines specified by Rule 10b5-1 under the Securities Exchange Act of 1934 and the company's policies with respect to insider sales. Rule 10b5-1 allows individuals, at a time when they are not aware of material nonpublic information, to adopt or amend predetermined plans for selling shares. Under these plans, each individual will be limited to the sale of the number of common shares represented by share options held by the individual that would otherwise expire in the following 12 months. Initially, a total of up to 166,000 common shares may be sold under these plans. The plans will allow individuals to add additional shares as the number of options expiring in the following 12 months increases. Each individual's plan will be unrelated to the others. The previously announced Rule 10b5-1 plans for XOMA executives, which could have included up to 675,000 shares, were not utilized.

Product Highlights

RAPTIVA® (Efalizumab): Collaboration with Genentech, Inc.

This anti-CD11a antibody therapeutic was developed through a collaboration between Genentech and XOMA. Genentech received FDA approval of RAPTIVA® in October of 2003. RAPTIVA® is

indicated for the treatment of adult patients (18 years or older) with chronic moderate to severe plaque psoriasis who are candidates for systemic therapy or phototherapy.

Outside the United States and Japan, RAPTIVA® is being sold by Serono S.A., which received European Commission Marketing Authorisation in September of 2004 for treatment of patients with moderate-to-severe chronic plaque psoriasis for whom other systemic treatments or phototherapy have been inadequate or inappropriate. Serono received additional international approvals in 2004. RAPTIVA® is now approved in more than 40 countries and reimbursed in 16 countries worldwide.

In the second quarter of 2005, Genentech reported US RAPTIVA® sales of $21.3 million, a 59% increase over the first quarter of 2004, and Serono reported international sales of $7.4 million.

US sales of RAPTIVA® for the first half of 2005 were $37.9 million compared to approximately $52.4 million for the full year 2004. International sales of RAPTIVÂreported by Serono for the full year 2004 were $4.9 million; sales outside of the US for the first half of 2005 were $11.9 million.

Oncology Therapeutic Antibodies Program: Collaboration with Chiron

In April of 2005, Chiron and XOMA started clinical testing of CHIR 12.12., the first drug candidate to reach clinical development under this collaboration. This single-agent, open-label Phase I study will evaluate safety, dose tolerability and pharmacokinetic profile of this fully human, antagonist antibody that targets the CD40 antigen. The study will monitor subject biomarkers in real time using translational medicine and is expected to enroll up to 40 patients with advanced CLL at three leading cancer centers in the United States. Chiron and XOMA also plan to initiate clinical testing of CHIR-12.12 in patients with multiple myeloma in the second half of 2005.

Under a worldwide, exclusive, multiple product agreement announced in March of 2004, the companies are jointly researching and developing multiple antibody product candidates, sharing expenses and revenues, generally on a 70-30 basis, with XOMA's share being 30%.

NIAID Anti-Bioterrorism Antibody Manufacturing Contract

XOMA was awarded a $15.0 million, 18-month contract by the National Institute of Allergy and Infectious Diseases (NIAID), a part of the National Institutes of Health, in March of 2005. The Company will develop and manufacture three monoclonal antibodies to protect Americans against the harmful effects of botulinum neurotoxin used as a bioterrorism agent. Using its proprietary cell expression systems, XOMA is developing a Master Cell Bank (MCB) and Manufacturer's Working Cell Bank (MWCB) that will produce anti-type A-botulinum neurotoxin monoclonal antibodies. This project will be 100% funded with Federal funds from NIAID under Contract No. HHSN266200500004C. SRI International, an independent, nonprofit research institute based in Menlo Park, CA, will be a subcontractor under this contract and will develop potency assays to support antibody characterization.

Lexicon Collaboration

This three-year collaboration, announced in June of 2005, combines Lexicon's biotherapeutics target discovery capabilities with XOMA's antibody generation platform to speed the development of novel therapeutic antibodies. Lexicon will select targets from its Genome 5000™ program in which Lexicon uses its gene knockout technology to determine the physiological functions of 5,000 potential drug targets. XOMA will generate and engineer antibody candidates for further development using its phage display libraries and Human Engineering™ technology. XOMA will be principally responsible for manufacturing antibodies for clinical trials and commercialization. Costs and profits will be allocated 65/35 between Lexicon and XOMA, respectively.

XOMA and Lexicon have already selected an initial target, a secreted protein involved in metabolic functions such as weight gain in response to diet and insulin sensitivity. Antibodies to this target may be therapeutically useful in the treatment of obesity, type 2 diabetes and other metabolic diseases.

BPI/NEUPREX®

In July of 2005, XOMA announced the termination of its license agreement with Zephyr for the research, development and commercialization of products related to bactericidal/permeability-increasing protein (BPI), including its NEUPREX® product. XOMA is actively seeking new partnerships with private and public companies and in the public sector and remains committed to the future development of BPI and NEUPREX®. The excellent safety profile of NEUPREX® continues to be an attractive clinical feature evidenced by ongoing investigator-sponsored probe studies evaluating NEUPREX® in pediatric and adult indications.

Bacterial Cell Expression System License Program

In June of 2005, XOMA announced it has granted a non-exclusive, worldwide license to Merck to use XOMA's bacterial cell expression (BCE) technology for phage display with potential use in the discovery of antibody products. XOMA received an undisclosed access fee and will be entitled to milestones and royalties on future sales of any products subject to this license. The agreement also provides an option for Merck to use XOMA's BCE technology to manufacture antibodies. Should Merck exercise this option, XOMA will receive an option fee and additional milestones and royalties.

Two antibody products in late-stage clinical testing are manufactured under license using XOMA's BCE technologies. These are Celltech Group plc's CIMZIA™ anti-TNF alpha antibody fragment in trials for Crohn's disease and rheumatoid arthritis, and Genentech's Lucentis™ (ranibizumab) antibody fragment against Vascular Endothelial Growth Factor (VEGF) in trials for wet age-related macular degeneration. To date, XOMA has granted BCE licenses to approximately 35 companies, many of which are applicable to products in earlier stages of development.

Investor Conference Call

XOMA has scheduled an investor conference call regarding this announcement to be held tomorrow, August 9, 2005, beginning at 4:00 PM EST (1:00 P.M. PST). Investors are invited to listen to the conference call by phone or via XOMA's website, http://www.xoma.com/. The domestic dial-in number (U.S./Canada) for the live call is 1-877-869-7222 and the conference ID number is 7748682. The international dial-in number is 1-706-679-5933 and uses the same dial-in conference I.D. number. To listen to the call via the Internet, go to XOMA's website a few minutes before the start of the call to register, download, and install any necessary audio software. The audio replay of the call will be available beginning two hours following the conclusion of the webcast through 6:00 p.m. EST (3:00 p.m. PST) on September 9, 2005. Access numbers for the replay are 1-800-642-1687 (U.S./Canada) or 1-706-645-9291 (International); Conference I.D. 7748682.

About XOMA

XOMA develops for commercialization antibody and other protein-based biopharmaceuticals, with a therapeutic focus on cancer, immune disorders and infectious diseases. XOMA has a royalty interest in RAPTIVA®, a product marketed worldwide that was developed in collaboration with Genentech. The company's pipeline includes proprietary products along with collaborative product development programs. For more information about XOMA's product pipeline and antibody product development capabilities and technologies, please visit XOMA's website at http://www.xoma.com/.

Certain statements contained herein related to future sales of RAPTIVA® and development of RAPTIVA® and CHIR 12.12, as well as other statements related to the progress and timing of product development, present or future licensing, collaborative or financing arrangements 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 sales efforts for RAPTIVA® may not be successful if Genentech, Inc. or its partner, Serono S.A., fails to meet its commercialization goals, due to the strength of the competition, if physicians do not adopt the product as treatment for their patients or if any important remaining regulatory approvals are not obtained; and future development of RAPTIVA® or CHIR 12.12 may not be successful for reasons related to safety or efficacy.

These and other risks, including those related to the results of 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 the existing collaborative relationships, availability of additional licensing or collaboration opportunities, the ability of collaborators and other partners to meet their obligations, market demand for products, scale up and marketing capabilities, competition, international operations, share price volatility, XOMA's financing needs and opportunities, uncertainties regarding the status of biotechnology patents, uncertainties as to the cost of protecting intellectual property and risks associated with XOMA's status as a Bermuda company, are described in more detail in the Company's most recent annual report on Form 10-K, quarterly report on Form 10-Q and other SEC filings.

Condensed Financial Statements Follow

XOMA Ltd.
CONDENSED CONSOLIDATED BALANCE SHEETS
(in thousands)

	June 30, 2005	December 31, 2004
	(unaudited)	
ASSETS		
Current assets:		
Cash and cash equivalents	$ 55,769	$ 23,808
Short-term investments	—	511
Receivables	4,374	707
Related party receivables	104	167
Prepaid expenses	2,073	1,414
Total current assets	62,320	26,607
Property and equipment, net	18,547	19,306
Related party receivables – long-term	171	188
Receivables – long-term	218	—
Deposits and other	3,205	159
Total assets	$ 84,461	$ 46,260
LIABILITIES AND SHAREHOLDERS' EQUITY (NET CAPITAL DEFICIENCY)		
Current liabilities:		
Accounts payable	$ 1,816	$ 1,919
Accrued liabilities	7,236	19,331
Notes payable	—	116
Capital lease obligations	104	237
Deferred revenue	2,902	2,000
Total current liabilities	12,058	23,603
Deferred revenue – long-term	5,551	6,333
Convertible debt – long-term	60,000	—
Interest bearing obligation – long-term	8,844	40,934
Total liabilities	86,453	70,870
Commitments and contingencies		
Shareholders' equity (net capital deficiency):		
Preference shares, $.05 par value, 1,000,000 shares authorized		
Series A, 135,000 designated, no shares issued and outstanding	—	—
Series B, 8,000 designated, 2,959 shares issued and outstanding; aggregate liquidation preference of $29.6 million	1	1
Common shares, $.0005 par value, 210,000,000 shares authorized, 86,276,623 and 85,587,174 shares outstanding at June 30, 2005 and December 31, 2004, respectively	43	43
Additional paid-in capital	654,937	653,537
Accumulated comprehensive income	—	280
Accumulated deficit	(656,973)	(678,471)
Total shareholders' equity (net capital deficiency)	(1,992)	(24,610)
Total liabilities and shareholders' equity (net capital deficiency)	$ 84,461	$ 46,260

XOMA Ltd.
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(unaudited, in thousands, except per share amounts)

	Three months ended June 30,		Six months ended June 30,	
	2005	2004	2005	2004
Revenues:				
License and collaborative fees	$ 2,655	$ 757	$ 3,180	$ 912
Contract revenue	933	—	2,192	—
Royalties	1,571	21	2,780	36
Total revenues	5,159	778	8,152	948
Operating costs and expenses:				
Research and development (including contract related of $974 and $1,785, respectively, for the three and six months ended June 30, 2005, and zero for the same periods of 2004)	9,547	12,862	19,549	25,877
General and administrative	3,709	3,588	7,460	7,523
Collaboration arrangement	—	5,191	—	8,429
Total operating costs and expenses	13,256	21,641	27,009	41,829
Loss from operations	(8,097)	(20,863)	(18,857)	(40,881)
Other income (expense):				
Investment and interest income	418	100	987	294
Interest expense	(1,117)	(278)	(1,778)	(618)
Other income (expense)	252	(2)	41,184	(6)
Income (loss) from operations before income taxes	$ (8,544)	$ (21,043)	$ 21,536	$ (41,211)
Provision for income taxes	38	—	38	—
Net income (loss)	$ (8,582)	$ (21,043)	$ 21,498	$ (41,211)
Basic net income (loss) per common share	$ (0.10)	$ (0.25)	$ 0.25	$ (0.49)
Diluted net income (loss) per common share	$ (0.10)	$ (0.25)	$ 0.20	$ (0.49)
Shares used in computing basic net income (loss) per common share	86,253	84,391	85,997	84,281
Shares used in computing diluted net income (loss) per common share	86,253	84,391	115,332	84,281