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

Form 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the Year Ended December 31, 2013
OR
☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number 000-51531

SUNESIS PHARMACEUTICALS, INC.
(Exact name of registrant as specified in its charter)

Delaware	**94-3295878**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification Number)

395 Oyster Point Boulevard, Suite 400
South San Francisco, California 94080
(Address of principal executive offices, including zip code)

(650) 266-3500
(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class:	**Name of Each Exchange on Which Registered:**
Common Stock, par value $0.0001 per share	The NASDAQ Stock Market LLC

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

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

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

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

Large accelerated filer ☐	Accelerated filer ☒	Non-accelerated filer ☐ (Do not check if a smaller reporting company)	Smaller reporting company ☐

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

The aggregate market value of common stock held by non-affiliates of the registrant, based on the closing sales price for such stock on June 30, 2013, as reported by The Nasdaq Stock Market, was $161,231,319. The calculation of the aggregate market value of voting and non-voting stock excludes 20,598,608 shares of the registrant's common stock held by current executive officers, directors and stockholders that the registrant has concluded are affiliates of the registrant. Exclusion of such shares should not be construed to indicate that any such person possesses the power, direct or indirect, to direct or cause the direction of the management or policies of the registrant or that such person is controlled by or under common control with the registrant.

The total number of shares outstanding of the registrant's common stock, $0.0001 par value per share, as of March 4, 2014, was 60,094,843.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's Definitive Proxy Statement, to be filed with the Securities and Exchange Commission pursuant to Regulation 14A in connection with the 2014 Annual Meeting of Stockholders of Sunesis Pharmaceuticals, Inc. (hereinafter referred to as "Proxy Statement") are incorporated by reference in Part III of this report. Such Proxy Statement will be filed with the Securities and Exchange Commission not later than 120 days after the conclusion of the registrant's year ended December 31, 2013.

SUNESIS PHARMACEUTICALS, INC.

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PART I

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report, including the information we incorporate by reference, contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995, which involve risks, uncertainties and assumptions. All statements, other than statements of historical facts, are "forward-looking statements" for purposes of these provisions, including without limitation any statements relating to our strategy, including our plans with respect to unblinding the VALOR trial, presenting clinical data and initiating clinical trials, our future research and development activities, including clinical testing and the costs and timing thereof, sufficiency of our cash resources, our ability to raise additional funding when needed, any statements concerning anticipated regulatory activities or licensing or collaborative arrangements, our research and development and other expenses, our operations and legal risks, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "anticipates," "believe," "continue," "could," "estimates," "expects," "intend," "look forward," "may," "seeks," "plans," "potential," or "will" or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including but not limited to those set forth under "Risk Factors," and elsewhere in this report. We urge you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All forward-looking statements included in this report are based on information available to us on the date of this report, and we assume no obligation to update any forward-looking statements contained in this report.

In this report, "Sunesis," the "Company," "we," "us," and "our" refer to Sunesis Pharmaceuticals, Inc. and its wholly-owned subsidiaries, except where it is made clear that the term refers only to the parent company.

ITEM 1. *BUSINESS*

General

We are a biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of solid and hematologic cancers. Our efforts are currently focused primarily on the development of vosaroxin for the treatment of acute myeloid leukemia, or AML. Vosaroxin is a first-in-class anti-cancer quinolone derivative, or AQD—a class of compounds that has not been used previously for the treatment of cancer. In earlier studies, vosaroxin has been shown to mediate anti-tumor activity by targeting mammalian topoisomerase II, an enzyme critical for cell replication. We have built a highly experienced cancer drug development organization committed to advancing vosaroxin in multiple indications to improve the lives of people with cancer.

In December 2010, we commenced enrollment of a Phase 3, multi-national, randomized, double-blind, placebo-controlled, pivotal trial of vosaroxin in combination with cytarabine in patients with relapsed or refractory AML, or the VALOR trial. The VALOR trial is designed to evaluate the effect of vosaroxin in combination with cytarabine, a widely used chemotherapy in AML, on overall survival as compared to placebo in combination with cytarabine, and is being conducted at more than 100 study sites in the U.S., Canada, Europe, South Korea, Australia and New Zealand.

In September 2012, following the recommendation of the trial's independent Data and Safety Monitoring Board, or DSMB, after the DSMB's completion of a single, pre-planned interim analysis of unblinded efficacy

and safety data sets from the VALOR trial, we implemented a one-time, 225 patient sample size increase to the VALOR trial, bringing target enrollment to 675 patients. This pre-specified sample size increase is designed to maintain adequate statistical power over a broader range of survival outcomes. In September 2013, we completed enrollment of 712 patients in the VALOR trial, which included a 5% over-enrollment factor. We anticipate unblinding of the VALOR trial in the third quarter of 2014, after reaching 562 events in the VALOR trial and locking the final database.

We are also preparing the final clinical study reports and manuscripts for two completed clinical trials of vosaroxin: a Phase 1b/2 trial of vosaroxin in combination with cytarabine for the treatment of patients with relapsed or refractory AML, and a Phase 2 trial in previously untreated patients age 60 years or older with AML, or REVEAL-1, which explored three dosing schedules of vosaroxin.

In the second half of 2013, we announced the initiation of three Phase 1/2 investigator-sponsored trials of vosaroxin, either as a standalone therapy or in combination with approved compounds, in various indications of AML and high-risk myelodysplastic syndrome, or MDS. The trials are being conducted at the University of Texas MD Anderson Cancer Center, Weill Cornell Medical College and New York-Presbyterian Hospital, and the Washington University School of Medicine.

We own worldwide development and commercialization rights to vosaroxin. In 2009, vosaroxin received orphan drug designation for the treatment of AML from the U.S. Food and Drug Administration, or FDA and in 2012, the European Commission granted orphan drug designation to vosaroxin for the treatment of AML, which may provide for 10 years of marketing exclusivity in all member countries of the European Union following product approval for this indication in Europe. In 2011, the FDA granted fast track designation to vosaroxin for the potential treatment of relapsed or refractory AML in combination with cytarabine. We have been granted, or notified of allowance of, a number of key patents for vosaroxin, details of which are provided in the “Intellectual Property” section below.

In January 2014, we announced the expansion of our oncology franchise through separate global licensing agreements for two preclinical kinase inhibitor programs. The first agreement, with Biogen Idec MA, Inc., or Biogen Idec, is for global commercial rights to SNS-062, a potent and selective non-covalently binding oral inhibitor of Bruton’s tyrosine kinase, or BTK. BTK is a mediator of B-cell receptor signaling that is integral to the pathogenesis of B-cell malignancies. With preclinical characteristics and activity distinct from compounds in the same class, SNS-062 may hold potential as a differentiated treatment for B-cell malignancies and other blood cancers. If the results of toxicology studies are satisfactory, we anticipate filing an investigational new drug, or IND, application for SNS-062 with the FDA in 2015 to begin human clinical trials.

The second agreement, with Millennium Pharmaceuticals, Inc., a wholly-owned subsidiary of Takeda Pharmaceutical Company Limited, or Millennium, is for global commercial rights to several potential first-in-class, pre-clinical inhibitors of the novel target phosphoinositide-dependent kinase-1, or PDK1. PDK1 is a key kinase and mediator of PI3K/AKT signaling, a pathway involved in cell growth, proliferation, differentiation, motility and survival. PDK1 inhibitors are expected to have unique effects on survival and invasion signaling and to be broadly active in both hematologic and solid tumor malignancies. We anticipate selecting a lead PDK1 development candidate to take into IND-enabling studies by the end of 2014.

Both BTK and PDK1 programs were originally developed under a research collaboration agreement between Biogen Idec and Sunesis. The PDK1 program was subsequently purchased by and exclusively licensed to Millennium in 2011 along with the more advanced program, MLN2480, a pan-RAF inhibitor currently in the maximum tolerated dose cohort expansion stage of a Millennium Phase 1, multicenter dose escalation study. We currently expect SNS-062 and the PDK1 inhibitors will be developed exclusively by Sunesis.

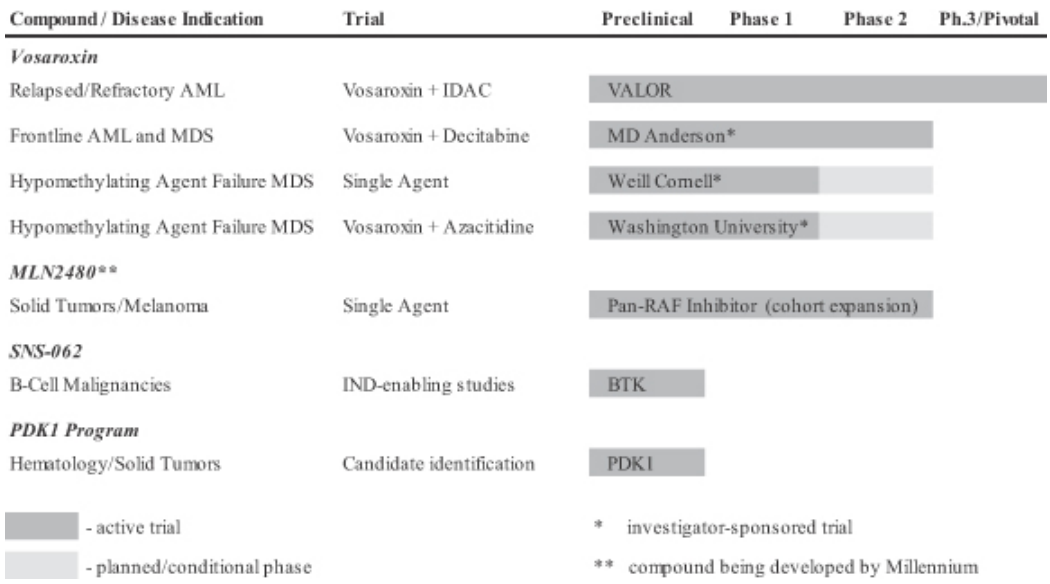
Our Strategy

We plan to continue to build Sunesis into a leading biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of solid and hematologic cancers by:

- obtaining regulatory approval to market vosaroxin as a treatment for relapsed or refractory AML in the United States, Europe and other major markets;
- building a commercial infrastructure in order to promote and market vosaroxin in the United States and other major markets as a treatment for AML;
- leveraging potential partners and distributors to commercialize vosaroxin in selective international markets;
- establishing vosaroxin as the new standard of care for patients with relapsed or refractory AML;
- exploring the broader potential of vosaroxin, beyond our pivotal indication, in different patient segments within AML and MDS through investigator sponsored studies;
- investing in additional clinical testing to evaluate vosaroxin for additional AML indications, MDS, other hematologic malignancies and solid tumors;
- leveraging our strong intellectual property protection over vosaroxin in order to expand the vosaroxin program beyond its lead AML indication;
- supporting our multi-kinase inhibitor programs with Millennium in oncology and Biogen Idec for immunology indications;
- conducting IND-enabling studies for our BTK inhibitor, SNS-062, with a view to commencing human clinical trials for this compound in 2015;
- conducting preclinical work on our in-licensed PDK1 inhibitor program with the goal of selecting a lead PDK1 development candidate to take into IND-enabling studies in 2014;
- continuing to expand and develop our oncology-focused pipeline through further licensing or collaboration arrangements and research and development; and
- investing in internal discovery programs for the development of novel small molecule therapeutics.

Development Pipeline

The following chart summarizes our development pipeline:



Vosaroxin

Background. Vosaroxin is a first-in-class AQD—a class of compounds that has not been used previously for the treatment of cancer. In earlier studies, vosaroxin has been shown to mediate anti-tumor activity by targeting mammalian topoisomerase II, an enzyme critical for cell replication. We licensed worldwide development and commercialization rights to vosaroxin from Dainippon Sumitomo Pharma Co., Ltd., or Dainippon, in 2003.

Mechanism of Action. Vosaroxin acts by DNA intercalation and inhibition of topoisomerase II in replicating cancer cells. The resulting site-selective DNA damage rapidly causes the cancer cells to stop dividing and die. In preclinical studies, vosaroxin demonstrated broad anti-tumor activity and exhibited additive or synergistic activity when combined with several therapeutic agents currently used in the treatment of cancer, including cytarabine. Clinical activity is observed in both solid and hematologic malignancies.

Development Opportunity. Our goal is to establish vosaroxin in combination with cytarabine as the standard of care for patients with relapsed or refractory AML. Beyond the primary indication in the VALOR trial, we are exploring the broader potential of vosaroxin in different patient segments within AML and MDS through investigator-sponsored studies. Based on the results of our VALOR trial, investigator-sponsored trials, regulatory and competitive concerns, our financial resources and various other factors, we may further invest in the development and clinical testing of vosaroxin for related disease areas and indications such as other AML populations, MDS, other hematologic malignancies and solid tumors.

Vosaroxin Clinical Trials in AML

VALOR. In December 2010, we commenced enrollment of the VALOR trial, a Phase 3, randomized, double-blind, placebo-controlled, pivotal clinical trial of vosaroxin in combination with cytarabine to evaluate overall survival in patients with relapsed or refractory AML, which is being conducted at more than 100 study

sites in the U.S., Canada, Europe, South Korea, Australia and New Zealand. In September 2012, following the recommendation of the trial's independent DSMB after their completion of a single, pre-planned interim analysis of unblinded efficacy and safety data sets from the VALOR trial, we implemented a one-time, 225 patient sample size increase to the VALOR trial, bringing target enrollment to 675 patients. This pre-specified sample size increase is designed to maintain adequate statistical power over a broader range of survival outcomes. In September 2013, we completed enrollment of 712 patients in the VALOR trial, which included a 5% over-enrollment factor. We anticipate unblinding of the VALOR trial in the third quarter of 2014, after reaching 562 events in the trial and locking the final database.

Phase 2 Combination. We are currently preparing the final clinical study report and manuscript for a completed Phase 1b/2 clinical trial of vosaroxin in combination with cytarabine in patients with relapsed or refractory AML. The trial was designed to evaluate the safety, pharmacokinetics and anti-leukemic activity of escalating doses of vosaroxin administered in combination with cytarabine given either as a continuous intravenous, or IV, infusion or a two-hour IV infusion. A pooled set of 69 patients with first relapsed (n=36) or primary refractory (n=33) AML were evaluated for efficacy outcomes. The median overall survival was 6.9 months, the complete remission, or CR, rate was 26%, and the combined complete remission rate was 29% including CR, CR without full platelet recovery, or CRp, and CR with incomplete recovery, or CRi. The two regimens of vosaroxin in combination with cytarabine were generally well tolerated. The most common severe non-hematologic toxicities were related to infections. Severe stomatitis or oral mucositis was observed in approximately 15% of patients, and was manageable with standard supportive care. All-cause mortality was low, at 3% at 30 days and 9% at 60 days.

Phase 2 Single-Agent. We are currently preparing the final clinical study report and manuscript for a completed Phase 2 single-agent clinical trial of vosaroxin in previously untreated patients aged 60 years or older with AML. The trial evaluated three dosing schedules. Based on the safety and efficacy results, vosaroxin at 72 mg/m^2 administered on days one and four was the recommended dose schedule for further study. For this schedule, median survival was 7.7 months and one-year survival was 38%. The CR plus CRp rate for this schedule was 35% and 30-day all-cause mortality was 7%.

Phase 1 Single-Agent. Prior to 2009, we conducted a Phase 1 clinical trial to evaluate safety, pharmacokinetics, and preliminary clinical activity of two dose schedules of vosaroxin in patients with relapsed or refractory acute leukemia. Anti-leukemic activity was observed in both schedules, and the most common dose-limiting toxicity was stomatitis. The maximum tolerated dose was 72 mg/m^2 for a once weekly for three weeks schedule and 40 mg/m^2 for a twice weekly for two weeks schedule.

Vosaroxin Clinical Trials in Ovarian Cancer and Other Solid Tumors

In 2010, we completed a Phase 2 single-agent trial of vosaroxin in platinum-resistant ovarian cancer. Three dosing levels in two treatment schedules were studied, and encouraging, durable anti-tumor activity was observed across all doses. For patients on dosing levels of 48, 60 and 75 mg/m^2, the overall response rate, or ORR, was 11%, 11% and 9%, respectively; disease control, defined as stable disease for 12 weeks or more, was 46%, 46% and 51%, respectively; and the median progression-free survival, or PFS, was 83, 61 and 103 days, respectively. Based on clinical activity and tolerability, the 60 mg/m^2 dose and schedule was selected for future consideration. Overall, vosaroxin was generally well tolerated, with more than 10% of patients experiencing severe neutropenia, febrile neutropenia, fatigue, and anemia.

Prior to 2009, we conducted two Phase 1 clinical trials to evaluate different dosing schedules of vosaroxin in patients with advanced solid tumors. We also conducted two Phase 2 studies in non-small cell lung cancer and small cell lung cancer. Although objective responses were observed in both lung cancer studies, it was determined that vosaroxin could be administered with greater dose intensity given the low incidence of severe neutropenia. The studies were halted and we may consider future vosaroxin studies in lung cancer or other solid tumors, as well as in hematologic malignancies.

Vosaroxin Investigator Sponsored Clinical Trials

MD Anderson. In July 2013, we announced the initiation of an investigator-sponsored trial of vosaroxin in combination with decitabine in older patients with previously untreated AML and high-risk MDS. The Phase 1/2 trial is being conducted at the University of Texas MD Anderson Cancer Center under the direction of Naval Daver, M.D., Assistant Professor, and Farhad Ravandi, M.D., Professor of Medicine and a principal investigator in the VALOR trial. The primary endpoints of the Phase 1 cohort of the study are to determine the safety, maximum tolerated dose, or MTD, and dose limiting toxicity, or DLT, of vosaroxin in combination with decitabine in patients with high-risk MDS or AML who are elderly and/or unable or unwilling to receive standard cytarabine plus anthracycline based chemotherapy. The primary endpoint of the Phase 2 cohort of the study is to determine the efficacy of the combination based on achievement of CR, and CR with incomplete blood count recovery, or CRi. Secondary endpoints include safety, CR duration, leukemia-free survival, and overall survival. In October 2013, we announced the commencement of the Phase 2 portion of the study.

Weill Cornell. In October 2013, we announced the initiation of a second investigator-sponsored trial of vosaroxin in adult patients with previously treated intermediate-2 or high-risk MDS. The trial is being conducted at Weill Cornell Medical College and New York-Presbyterian Hospital under the direction of Gail J. Roboz, M.D., Associate Professor of Medicine and Director of the Leukemia Program. The Phase 1/2, open-label, dose escalating trial is expected to enroll up to 40 patients with MDS who have previously failed treatment with hypomethylating agent-based therapy. Patient cohorts will initially receive escalating doses of vosaroxin over each 28 day treatment cycle. Once the MTD is determined, an expanded evaluation of safety and hematologic response or improvement rate at this dose level will be conducted in additional subjects, so that the total number of subjects exposed to this dose level increases to up to 15 subjects. In addition to MTD and DLT, study endpoints include the rate of complete remission, partial remission, hematologic improvement and blood transfusion requirements.

Washington University. In December 2013, we announced the initiation of a third investigator-sponsored trial of vosaroxin in combination with azacitidine in patients with MDS. The trial is being conducted at the Washington University School of Medicine under the direction of Meagan A. Jacoby, M.D., Ph.D., Instructor of Medicine, Division of Oncology. The Phase 1/2, open label, dose-escalation trial will enroll up to approximately 40 patients with MDS who may have received up to three prior cycles of hypomethylating agent-based therapy. Patients will receive vosaroxin (days one and four) and azacitidine (days one through seven) for a maximum of six cycles. This dose escalation study is designed to enroll six patients per cohort in order to determine the MTD and DLT of the combination. Other endpoints include best response, safety, tolerability, and event-free, progression-free, disease-free and overall survival. Once the MTD is determined, up to an additional 20 patients will be enrolled, treated and evaluated at that dose level.

MLN2480

Background. A pan-Raf inhibitor program was originally developed through a collaboration agreement between Sunesis and Biogen Idec. In March 2011, Biogen Idec’s rights to this program were purchased by and exclusively licensed to Millennium. In September 2011, Millennium initiated a Phase 1 clinical study of MLN2480, an oral, investigative drug selective for pan-Raf kinase inhibition, in patients with relapsed or refractory solid tumors. The Phase 1, multicenter, open-label, dose escalation study was designed to evaluate the safety, tolerability and MTD of MLN2480, and to be conducted in two stages: dose escalation and cohort expansion. The dose escalation stage is complete and MTD was established, and MLN2480 is now in the cohort expansion stage of this multicenter study.

Under the license agreement, we may in the future receive up to $57.5 million in pre-commercialization, event-based payments related to the development by Millennium of the first two indications for each of the licensed products directed against the Raf target, and royalty payments depending on related product sales, as further described below.

Mechanism of Action. The Raf kinases (A-Raf, B-Raf and C-Raf) are key regulators of cell proliferation and survival within the mitogen-activated protein kinase (MAPK) pathway. The MAPK pathway is frequently disregulated in human cancers, often via activating mutations of Ras or Raf.

Development Opportunity. MLN2480 is a pan-Raf kinase inhibitor with a distinct molecular signature which has exhibited a promising preclinical profile.

SNS-062

Background. SNS-062 is a potent, non-covalently binding inhibitor of BTK. BTK mediates signaling through the B-cell receptor, or BCR, which is critical for adhesion, migration, proliferation and survival of normal and malignant B-lineage lymphoid cells. BTK has been well validated as a target for treatment of B-cell malignancies, with BTK inhibitors approved for mantle cell lymphoma, or MCL, and for chronic lymphocytic leukemia, or CLL, and diffuse large B-cell lymphoma. Because SNS-062 has demonstrated in preclinical studies a distinct mechanism of action and improved pharmacokinetic profile compared to compounds in the same class, SNS-062 may provide differentiated opportunities for treatment of B-cell malignancies and other blood cancers. We have initiated preclinical development for SNS-062 and, assuming satisfactory results in GLP toxicology studies, are planning to file an IND application for SNS-062 with the FDA in 2015. The rights to develop SNS-062 for oncology indications were in-licensed from Biogen Idec in December 2013, as described below.

Mechanism of Action. SNS-062 has potent activity in BTK kinase assays and has shown good efficacy in B-cell signaling assays and in vivo models of B-cell function. The mechanism by which SNS-062 inhibits BTK is distinct from the mechanism of in-class BTK compounds, as SNS-062 binds BTK non-covalently, which does not require interaction with Cysteine 481 in the kinase active domain. In addition, SNS-062 has a distinct kinase inhibitory profile and a favorable pharmacokinetic profile compared to covalently binding BTK inhibitors and this may translate into a distinct clinical benefit for patients.

Development Opportunity. Ibrutinib, currently marketed by Pharmacyclics, Inc. for the treatment of patients with CLL and MCL, has demonstrated good safety and efficacy in CLL and B-cell lymphoma in clinical studies. Targeting BCR signaling by inhibiting of phosphatidylinositol kinase (PI3K) is emerging as an alternative treatment option, with the PI3K delta inhibitor idelalisib currently under NDA review by the FDA for its use in CLL. In addition to ibrutinib and idelalisib, there are multiple additional BTK and PI3K inhibitors in development, making for a competitive BTK/PI3K development landscape. However, we believe there is a significant B-cell leukemia/lymphoma patient population that is refractory to treatment with the BTK and PI3K inhibitors evaluated to date. Because SNS-062 has a distinct mechanism of action compared to ibrutinib and other covalently binding BTK inhibitors, SNS-062 may provide differentiated opportunities for treatment of select refractory patient populations with B-cell malignancies.

PDK1 Program

Background. In January 2014, we in-licensed a series of potent and selective oral PDK1 inhibitors from Millennium that were discovered under a research collaboration agreement between Biogen Idec and Sunesis, as described below. We believe that PDK1 is a key kinase that is critical for activation of the PI3K/AKT signaling pathway, which is essential for regulating cell metabolism, proliferation, survival and migration and is therefore frequently activated in cancer. We have taken a series of PDK1 inhibitors with confirmed anti-tumor activity in vitro and in vivo into preclinical development and are expecting to identify a development candidate for IND-enabling studies by the end of 2014.

Mechanism of Action. The importance of the PI3K/AKT pathway in tumor development has been well appreciated and has been validated in the clinic, with multiple PI3K inhibitor compounds in late stage development for both solid and hematological tumor indications. We believe that PDK1-dependent activation of AKT is critical for PI3K pathway activation, which makes AKT a key oncology target within the PI3K pathway. In addition, PDK1 has unique, additional effects on survival and invasion signaling beyond PI3K and AKT, which could provide additional clinical benefits beyond inhibition of PI3K/AKT signaling. However, PDK1 has proven to be an elusive target, because it has been difficult to identify potent and selective inhibitors of this kinase. We believe Sunesis' PDK1 inhibitors are potential first-in-class compounds that have pre-clinically demonstrated inhibition of AKT activity and a compelling in vitro and in vivo profile, with potential for single agent and broad-spectrum combination activity, thus providing a novel therapeutic opportunity for targeting the PI3K signaling pathway in both solid and hematologic malignancies.

Development Opportunity. There are multiple PI3K pathway inhibitors in late stage development, with the PI3K inhibitor idelalisib currently under NDA review by the FDA for its use in CLL and several compounds in phase II clinical trials for solid tumor indications, including breast cancer and pancreatic cancer. Inhibitors of PDK1 are expected to be able to provide similar clinical benefits to those observed with PI3K inhibitors and have the potential to provide additional benefits through inhibition of PI3K independent cancer signaling pathways, especially in cancer types in which PDK1 is overexpressed such as breast cancer and AML. We believe that Sunesis' PDK1 inhibitors are potential first-in-class compounds that can be differentiated from PI3K and PDK1 inhibitors currently in research and development and that may provide novel opportunities for treatment of solid and hematological malignancies.

License, Collaboration and Royalty Agreements

Inlicense Agreement with Dainippon

In October 2003, we entered into an agreement with Dainippon to acquire exclusive worldwide development and marketing rights for vosaroxin. In January 2011, we made a $0.5 million milestone payment to Dainippon as a result of the initiation of our VALOR trial in December 2010. In the future we may be required to make additional milestone payments of up to $7.0 million in aggregate to Dainippon for (a) filing NDAs, in the U.S., Europe and Japan, and (b) for receiving regulatory approvals in these regions, for cancer-related indications. If vosaroxin is approved for a non-cancer indication, an additional milestone payment will become payable to Dainippon.

The agreement also provides for royalty payments to Dainippon at rates based on total annual net sales. Under the agreement, we may reduce our royalty payments to Dainippon if a third party markets a competitive product and we must pay royalties for third-party intellectual property rights necessary to commercialize vosaroxin. Royalty obligations under the agreement continue on a country-by-country and product-by-product basis until the later of the date on which no valid patent claims relating to a product exist or 10 years from the date of the first sale of the product.

If we discontinue seeking regulatory approval and/or the sale of the product in a region, we are required to return its rights to the product in that region to Dainippon. The agreement may be terminated by either party for the other party's uncured breach or bankruptcy.

Licensing and Collaboration Agreements with Biogen Idec and Millennium

Overview

In August 2004, we entered into the original collaboration agreement with Biogen Idec to discover, develop and commercialize small molecule inhibitors of the human protein Raf kinase, including family members Raf-1, A-Raf, B-Raf and C-Raf, collectively Raf, and up to five additional targets that play a role in oncology and immunology indications such as BTK and PDK1, or the Biogen Idec OCA.

In June 2008, in connection with the Company's restructuring, the parties agreed to terminate the research term and related funding as of June 30, 2008. A total of $20.0 million of research funding was received through that date. We received a total of $3.0 million in milestone payments for meeting certain preclinical milestones through the Biogen Idec 1st ARCA date, as described below, including a $1.5 million event-based payment received in cash in July 2009 for Biogen Idec's selection of a Raf kinase inhibitor development candidate for the treatment of cancer.

In March 2011, as part of a series of agreements among Sunesis, Biogen Idec and Millennium, we entered into: (a) an amended and restated collaboration agreement with Biogen Idec, or the Biogen Idec 1st ARCA; (b) a license agreement with Millennium, or the Millennium Agreement; and (c) a termination and transition agreement among the Sunesis, Biogen Idec and Millennium, or the Termination and Transition Agreement.

The Termination and Transition Agreement provided for (a) the termination of Biogen Idec's exclusive rights under the Biogen Idec OCA to all discovery programs under such agreement other than for small molecule inhibitors of the human protein BTK; (b) the permitted assignment to Millennium of all related Sunesis collaboration assets and rights to Raf kinase and the human protein PDK1; and (c) the payment of $4.0 million to us from Millennium, which was recorded as revenue in March 2011.

Biogen Idec

The Biogen Idec 1st ARCA amended and restated the Biogen Idec OCA, to provide for the discovery, development and commercialization of small molecule BTK inhibitors. Under this agreement, we no longer have research obligations, but licenses granted to Biogen Idec with respect to the research collaboration under the Biogen Idec OCA (other than the licenses transferred to Millennium under the Millennium Agreement) remain in effect.

In June 2012, we received an event-based payment of $1.5 million from Biogen Idec for its advancement of pre-clinical work in connection with the Biogen Idec 1st ARCA. Under this agreement, we are eligible to receive up to an additional $58.5 million in pre-commercialization, event-based payments related to the development by Biogen Idec of the first two indications for licensed products against the BTK target. We are also eligible to receive royalty payments depending on related product sales, which may be increased if we exercise our option to co-fund product candidates worldwide.

In December 2013, we entered into a second amended and restated collaboration agreement with Biogen Idec, or the Biogen Idec 2nd ARCA, which amended and restated the Biogen Idec 1st ARCA, to provide us with an exclusive worldwide license to develop, manufacture and commercialize SNS-062, a BTK inhibitor synthesized under the Biogen Idec 1st ARCA, solely for oncology indications. Under the Biogen Idec 2nd ARCA, we may be required to make a $2.5 million milestone payment depending on our development of SNS-062 and royalty payments depending on related product sales of SNS-062. Additionally, potential future royalty payments to Sunesis were reduced to equal those amounts due to Biogen Idec for potential future sales of SNS-062. All other of Sunesis' rights contained in the Biogen Idec 1st ARCA remain unchanged.

Millennium

Under the Millennium Agreement, we granted exclusive licenses to products against two oncology targets originally developed under the Biogen Idec OCA, Raf and PDK1, under substantially the same terms as under the Biogen Idec OCA.

In January 2014, we entered into an amended and restated license agreement with Millennium, or the Amended Millennium Agreement, to provide us with an exclusive worldwide license to develop and commercialize preclinical inhibitors of PDK1. In connection with execution of the Amended Millennium Agreement, we paid an upfront fee and may in the future be required to make up to $9.2 million in

pre-commercialization milestone payments depending on our development of PDK1 inhibitors and royalty payments depending on related product sales.

With respect to the Raf target product rights that were originally licensed to Millennium under the Millennium Agreement, we may in the future receive up to $57.5 million in pre-commercialization, event-based payments related to the development by Millennium of the first two indications for each of the licensed products directed against the Raf target and royalty payments depending on related product sales. The agreement also provides us with future co-development and co-promotion rights. Millennium is currently conducting a Phase 1 clinical study of an oral investigative drug, MLN2480, which is licensed to them under the Amended Millennium Agreement.

Outlicense Agreement with SARcode

In March 2006, we licensed our lymphocyte function-associated antigen-1, or LFA-1, patents and related know-how to SARcode Bioscience, Inc., or SARcode. SARcode was acquired by Shire PLC in 2013. In March 2009, the license agreement was terminated and SARcode paid us $2.0 million in cash for this intellectual property, which was recorded as revenue in April 2009. Following the termination of the license agreement, SARcode fully satisfied its obligations to us and we have no further rights to the intellectual property transferred to SARcode. In August 2011, SARcode repaid three promissory notes that had been issued to us upon entering into the original license agreement. The total amount received was $1.2 million, which comprised the aggregate principal value of the three notes of $1.0 million, plus $0.2 million of accrued interest, which we recorded as revenue and interest income, respectively, upon receipt.

Royalty Agreement with RPI

In March 2012, we entered into a Revenue Participation Agreement, or the Royalty Agreement, with RPI Finance Trust, or RPI, an entity related to Royalty Pharma. In September 2012, as a result of the recommendation by the DSMB to increase the sample size for the VALOR trial, RPI made a $25.0 million cash payment to us in exchange for a 6.75% royalty on any future net sales of vosaroxin. In conjunction with the Royalty Agreement, we issued two five-year warrants to RPI, each to purchase 1,000,000 shares of our common stock, at exercise prices of $3.48 and $4.64 per share, respectively. Of the $25.0 million, $21.9 million was recorded as deferred revenue and is being amortized to revenue over the related performance period of the Royalty Agreement. The remaining $3.1 million represents the fair value of the warrants.

Revenues

Over the past three years, we have generated revenue through license and collaboration agreements with Biogen Idec, Millennium and SARcode, and the Royalty Agreement with RPI. In 2013, we recognized $8.0 million of revenue related to the Royalty Agreement with RPI. In 2012, we recognized $2.3 million of revenue related to the Royalty Agreement with RPI and $1.5 million related to the Biogen Idec 1st ARCA, which represented 60% and 40% of 2012 revenues, respectively. In 2011, we recorded revenues of $4.0 million related to the Millennium Agreement and $1.0 million related to the SARcode license agreement, which represented 80% and 20% of 2011 revenues, respectively.

Manufacturing

We do not have internal manufacturing capabilities for the production of clinical or commercial quantities of vosaroxin. To date, we have relied on, and we expect to continue to rely on, a limited number of third-party contract manufacturers for the production of clinical and commercial quantities of the vosaroxin active pharmaceutical ingredient, or API, and the finished drug product incorporating the API, or FDP. We do not have commercial supply agreements with any of these third parties, and our agreements with these parties may include provisions that allow for termination at will by either party following a relatively short notice period.

We currently rely on two contract manufacturers for the vosaroxin API. We also currently rely on a single contract manufacturer to formulate the vosaroxin API and fill and finish vials of the vosaroxin FDP. Because the vosaroxin API is classified as a cytotoxic substance, the number of available manufacturers for the API and FDP is limited. We believe at least five contract manufacturers in North America have suitable facilities to manufacture the vosaroxin API, and at least four have suitable facilities to manufacture the vosaroxin FDP. A number of manufacturers outside of North America have suitable facilities, including one that currently manufactures our vosaroxin API. If we are unable to obtain sufficient quantities of the vosaroxin API and FDP from our current manufacturers, it may take time to engage alternative manufacturers, which could delay the development of and impair our ability to commercialize vosaroxin.

To date, vosaroxin has been manufactured in quantities appropriate for preclinical studies and clinical trials, including the manufacture of registration batches of API and FDP. Prior to submission for FDA review and approval for commercial sale, we will need to perform process validation studies on API batches manufactured for commercial launch. If the results of these process validation studies do not meet preset criteria, the regulatory approval or commercial launch of vosaroxin may be delayed.

Competition

The life sciences industry is highly competitive, and we face significant competition from many pharmaceutical, biopharmaceutical and biotechnology companies that are researching, developing and marketing products designed to address the treatment of cancer, including AML and MDS. Many of our competitors have significantly greater financial, manufacturing, marketing and drug development resources than we do. Large pharmaceutical companies in particular have extensive experience in the clinical testing of, obtaining regulatory approvals for, and marketing drugs.

We believe that our ability to successfully compete in the marketplace with vosaroxin and any future product candidates will depend on, among other things:

- our ability to develop novel compounds with attractive pharmaceutical properties and to secure, protect and maintain intellectual property rights based on our innovations;
- the efficacy, safety and reliability of our product candidates;
- the speed at which we develop our product candidates;
- our ability to design and successfully execute appropriate clinical trials;
- our ability to maintain a good relationship with regulatory authorities;
- our ability to obtain, and the timing and scope of, regulatory approvals;
- our ability to manufacture and sell commercial quantities of future products to the market;
- the availability of reimbursement from government agencies and private insurance companies; and
- acceptance of future products by physicians and other healthcare providers.

Vosaroxin is a small molecule therapeutic that will compete with other drugs and therapies currently used for AML, such as nucleoside analogs, anthracyclines, hypomethylating agents, Flt-3 inhibitors, other inhibitors of topoisomerase II, and other novel agents. Additionally, other compounds currently in development could become potential competitors of vosaroxin, if approved for marketing. We expect competition with vosaroxin for the

treatment of AML and other potential future indications to increase as additional products are developed and approved for use in various patient populations.

Intellectual Property

We believe that patent protection is very important to our business and that our future success depends in part on our ability to obtain patents protecting vosaroxin or future drug candidates, if any. Historically, we have patented a wide range of technology, inventions and improvements related to our business, some of which we are no longer actively developing.

The original vosaroxin composition of matter is covered by U.S. Patent No. 5,817,669 and its counterpart patents in 43 foreign jurisdictions. This U.S. patent will expire in October 2015, while its foreign counterparts will expire in June 2015. While it is possible that patent term restoration and/or supplemental patent certificates would be available for some of these or other patents we own, we cannot guarantee that such additional protection will be obtained, and the expiration dates described here do not include such term restoration.

We have been granted a number of additional key patents for vosaroxin, as follows:

- In December 2009, the European Patent Office, or EPO, granted us Patent No. 1729770 covering combination products including vosaroxin and cytarabine, which will expire in 2025 and has been validated in multiple EPC member states. In June 2011, the U.S. Patent and Trademark Office, or USPTO, granted us a patent in the same family, which will expire in 2026. In March 2011, Australia granted us a patent in this family, which will expire in 2025. In September 2012, Japan also granted us a patent in this family, which will expire in 2025. Corresponding applications are pending in other major markets, including Canada.

- In November 2010, the USPTO granted us Patent No. 7,829,577 covering pharmaceutical compositions of vosaroxin, including the formulation used in our VALOR trial. This patent will expire in 2025. In January 2011, the EPO granted us a patent in the same family, which has been validated in multiple European Patent Convention, or EPC, member states. In September 2011, Australia also granted us a patent in this family. These patents will expire in 2025. Corresponding applications are pending in other major markets, including Japan and Canada.

- In August 2011, the USPTO granted us Patent No. 7,989,468 covering methods of use of vosaroxin at clinically relevant dose ranges and schedules for the treatment of leukemia. This patent will expire in 2026. Corresponding applications are pending in other major markets, including Europe, Japan, Australia and Canada.

- In February 2012, the USPTO granted us Patent No. 8,124,773 covering certain vosaroxin hydrate forms, which will expire in 2028. Corresponding applications are pending in other major markets, including Europe, Japan, Australia and Canada.

- In November 2013, the USPTO granted us Patent No. 8,580,814 covering certain methods of using vosaroxin to treat acute myelogenous leukemia, which will expire in 2027. In September 2013, Japan and Australia granted us patents in the same family, which will expire in 2026. Corresponding applications are pending in other major markets, including Europe and Canada.

- In March 2012, the USPTO granted us Patent No. 8,138,202 covering certain vosaroxin compositions, including vosaroxin API and FDP, which will expire in 2030. In November 2013, the USPTO granted us Patent No. 8,586,601 covering certain vosaroxin compositions, which will expire in 2030. Corresponding patent applications are pending internationally.

As of December 31, 2013, we own, co-own or have rights to approximately 133 granted U.S. and foreign patents, and approximately 124 pending U.S. and foreign applications, pertaining to vosaroxin and compositions

and uses thereof. When appropriate, we intend to seek patent term restoration, orphan drug status and/or data exclusivity in the United States and their equivalents in other relevant jurisdictions, to the maximum extent that the respective laws will permit at such time. In April 2012, the European Commission granted orphan drug designation to vosaroxin for the treatment of AML, which may provide for 10 years of marketing exclusivity in all member countries of the European Union following product approval for this indication in Europe. In 2009, the FDA granted orphan drug designation to vosaroxin for the treatment of AML.

Our ability to build and maintain our proprietary position for vosaroxin and any future drug candidates, if any, will depend on our success in obtaining effective claims and enforcing granted claims. The patent positions of biopharmaceutical companies like ours are generally uncertain and involve complex legal and factual questions for which some important legal principles remain unresolved. No consistent policy regarding the breadth of patent claims has emerged to date in the United States. The patent situation outside the United States is even more uncertain. We do not know whether any of our patent applications or those patent applications that we license will result in the issuance of any patents. Even if patents are issued, they may not be sufficient to protect vosaroxin or future drug candidates, if any. The patents we own or license and those that may be issued in the future may be opposed, challenged, invalidated or circumvented, and the rights granted under any issued patents may not provide us with proprietary protection or competitive advantages.

Patent applications filed before November 29, 2000 in the United States are maintained in secrecy until patents issue. Later filed U.S. applications and patent applications in most foreign countries generally are not published until at least 18 months after their earliest filing date. Scientific and patent publication often occurs long after the date of the scientific discoveries disclosed in those publications. Accordingly, we cannot be certain that we were the first to invent the subject matter covered by any patent application or that we were the first to file a patent application for any inventions.

Our commercial success depends on our ability to operate without infringing patents and proprietary rights of third parties. We cannot determine with certainty whether patents or patent applications of other parties may materially affect our ability to conduct our business. The existence of third party patent applications and patents could significantly reduce the coverage of patents owned by or licensed to us and limit our ability to obtain meaningful patent protection. If patents containing competitive or conflicting claims are issued to third parties and these claims are ultimately determined to be valid, we may be enjoined from pursuing research, development or commercialization of vosaroxin or future drug candidates, if any, or be required to obtain licenses to such patents or to develop or obtain alternative technology.

We may need to commence or defend litigation to enforce or to determine the scope and validity of any patents issued to us or to determine the scope and validity of third party proprietary rights. Litigation would result in substantial costs, even if the eventual outcome is favorable to us. An adverse outcome in litigation affecting proprietary rights we own or have licensed could present significant risk of competition for vosaroxin or future drug candidates, if any, that we market or seek to develop. Any adverse outcome in litigation affecting third party proprietary rights could subject us to significant liabilities to third parties and could require us to seek licenses of the disputed rights from third parties or to cease using the technology if such licenses are unavailable.

We also rely on trade secrets to protect our technology, especially in situations or jurisdictions in which we believe patent protection may not be appropriate or obtainable. However, trade secrets are difficult to maintain and do not protect technology against independent developments made by third parties.

We seek to protect our proprietary information by requiring our employees, consultants, contractors and other advisers to execute nondisclosure and assignment of invention agreements upon commencement of their employment or engagement. Agreements with our employees also prevent them from bringing the proprietary rights of third parties to us. We also require confidentiality or material transfer agreements from third parties that receive our confidential data or materials. There can be no assurance that these agreements will provide

meaningful protection, that these agreements will not be breached, that we will have an adequate remedy for any such breach, or that our trade secrets will not otherwise become known or independently developed by a third party.

We seek to protect our company name and the names of our products and technologies by obtaining trademark registrations, as well as common law rights in trademarks and service marks, in the United States and in other countries. There can be no assurance that the trademarks or service marks we use or register will protect our company name or any products or technologies that we develop and commercialize, that our trademarks, service marks, or trademark registrations will be enforceable against third parties, or that our trademarks and service marks will not interfere with or infringe trademark rights of third parties. We may need to commence litigation to enforce our trademarks and service marks or to determine the scope and validity of our or a third party's trademark rights. Litigation would result in substantial costs, even if the eventual outcome is favorable to us. An adverse outcome in litigation could subject us to significant liabilities to third parties and require us to seek licenses of the disputed rights from third parties or to cease using the trademarks or service marks if such licenses are unavailable.

Government Regulation

The FDA and comparable regulatory agencies in state and local jurisdictions and in foreign countries impose substantial requirements upon the clinical development, manufacture, marketing and distribution of drugs. These agencies and other federal, state and local entities regulate research and development activities and the testing, manufacture, quality control, safety, efficacy, labeling, storage, recordkeeping, approval, advertising and promotion of vosaroxin and any future drug candidates we may develop, if any. The application of these regulatory frameworks to the development, approval and commercialization of vosaroxin or our future drug candidates, if any, will take a number of years to accomplish, if at all, and involve the expenditure of substantial resources.

In the United States, the FDA regulates drugs under the Federal Food, Drug, and Cosmetic Act, as amended, and implementing regulations. The process required by the FDA before vosaroxin and any future drug candidates may be marketed in the United States generally involves the following:

- completion of extensive preclinical laboratory tests, *in vivo* preclinical studies and formulation studies;
- submission to the FDA of an IND application, which must become effective before clinical trials begin;
- performance of adequate and well-controlled clinical trials to establish the safety and efficacy of the product candidate for each proposed indication;
- submission of an NDA to the FDA;
- satisfactory completion of an FDA pre-approval inspection of the manufacturing facilities at which the product candidate is produced to assess compliance with current Good Manufacturing Practice, or cGMP, regulations; and
- FDA review and approval of the NDA, including proposed labeling (package insert information) and promotional materials, prior to any commercial marketing, sale or shipment of the drug.

The testing and approval process requires substantial time, effort and financial resources, and we cannot be certain that any approvals for vosaroxin or our future drug candidates, if any, will be granted on a timely basis, if at all.

Preclinical Testing and INDs

Preclinical tests include laboratory evaluation of product chemistry, formulation and stability, as well as studies to evaluate toxicity in animals. Laboratories that comply with the FDA Good Laboratory Practice regulations must conduct preclinical safety tests. The results of preclinical tests, together with manufacturing information and analytical data, are submitted as part of an IND application to the FDA. The IND automatically becomes effective 30 days after receipt by the FDA, unless the FDA, within the 30-day time period, raises concerns or questions about the conduct of the clinical trial, including concerns that human research subjects will be exposed to unreasonable health risks. In such a case, the IND sponsor and the FDA must resolve any outstanding concerns before the clinical trial can begin. Our submission of an IND, or those submitted by Biogen Idec, Millennium, or our potential future licensees or collaboration partners, if any, may not result in FDA authorization to commence a clinical trial.

Clinical Trials

Clinical trials involve the administration of an investigational drug to healthy volunteers or to patients under the supervision of a qualified principal investigator. Clinical trials are conducted in accordance with the FDA's Protection of Human Subjects regulations and Good Clinical Practices, or GCP, under protocols that detail the objectives of the study, the parameters to be used to monitor safety, and the efficacy criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND application.

In addition, each clinical study must be conducted under the auspices of an independent institutional review board, or IRB, at each institution where the study will be conducted. Each IRB will consider, among other things, ethical factors, the safety of human subjects and the possible liability of the institution. The FDA, an IRB or the sponsor may suspend a clinical trial at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk. Clinical testing also must satisfy extensive GCP requirements and regulations for informed consent.

Clinical trials are typically conducted in three sequential phases, which may overlap, sometimes followed by a fourth phase:

- *Phase 1 clinical trials* are initially conducted in a limited population to test the drug candidate for safety (adverse effects), dose tolerance, absorption, metabolism, distribution and excretion in healthy humans or, on occasion, in patients, such as cancer patients. In some cases, particularly in cancer trials, a sponsor may decide to conduct what is referred to as a "Phase 1b" evaluation, which is a second safety-focused Phase 1 clinical trial typically designed to evaluate the impact of the drug candidate in combination with currently approved drugs.

- *Phase 2 clinical trials* are generally conducted in a limited patient population to identify possible adverse effects and safety risks, to determine the efficacy of the drug candidate for specific targeted indications and to determine dose tolerance and optimal dosage. Multiple Phase 2 clinical trials may be conducted by the sponsor to obtain information prior to beginning larger and more expensive Phase 3 clinical trials. In some cases, a sponsor may decide to conduct what is referred to as a "Phase 2b" evaluation, which is a second, confirmatory Phase 2 clinical trial that could, if positive and accepted by the FDA, serve as a pivotal clinical trial in the approval of a drug candidate.

- *Phase 3 clinical trials* are commonly referred to as pivotal trials. When Phase 2 clinical trials demonstrate that a drug candidate has potential activity in a disease or condition and has an acceptable safety profile, Phase 3 clinical trials are undertaken to further evaluate clinical efficacy and to further test for safety in an expanded patient population at multiple, geographically dispersed clinical trial sites.

- *Phase 4 (post-marketing) clinical trials* may be required by the FDA in some cases. The FDA may condition approval of an NDA for a drug candidate on a sponsor's agreement to conduct additional clinical trials to further assess the drug's safety and/or efficacy after NDA approval. Such post-approval trials are typically referred to as Phase 4 clinical trials.

New Drug Applications

The testing and approval processes are likely to require substantial cost, time and effort, and there can be no assurance that any approval will be granted on a timely basis, if at all. The FDA may withdraw product approvals if compliance with regulatory standards is not maintained or if problems occur following initial marketing.

The results of development, preclinical testing and clinical trials, together with extensive manufacturing information and a substantial user fee, are submitted to the FDA as part of an NDA for approval of the marketing and commercial distribution of the drug. The review process routinely takes 12 months (under the latest Prescription Drug User Fee Act, or PDUFA, goals, a 10-month review period begins at the conclusion of the 60-day filing review period that begins on the date of FDA receipt of the submission), but is often significantly extended by FDA requests for additional information or clarification. The FDA may refer the NDA to an advisory committee for review, evaluation and recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations. The FDA may deny approval of an NDA if the applicable regulatory criteria are not satisfied, or it may require additional clinical testing. Even if data from such testing is obtained and submitted, the FDA may ultimately decide that the NDA does not satisfy the criteria for approval. Data from clinical trials are not always conclusive and the FDA may interpret data differently than we, Biogen Idec, Millennium, or our potential future licensees or collaboration partners, if any, interpret data. If regulatory approval is granted, such approval may entail limitations on the indicated uses for which the product may be marketed.

Once issued, the FDA may withdraw drug approval if ongoing regulatory requirements are not met or if safety problems occur after the drug reaches the market. In addition, the FDA may require testing, including Phase 4 clinical trials, and surveillance programs to monitor the effect of approved products that have been commercialized, and the FDA has the power to prevent or limit further marketing of a drug based on the results of these post-marketing programs. Drugs may be marketed only for approved indications and in accordance with the provisions of the approved label. Further, if there are any modifications to the drug, including changes in indications, labeling, or manufacturing processes or facilities, we may be required to submit and obtain FDA approval of a new NDA or NDA supplement, which may require us to develop additional data or conduct additional preclinical studies and clinical trials.

Orphan Drug Designation

The United States Orphan Drug Act promotes the development of products that demonstrate promise for the diagnosis and treatment of diseases or conditions that affect fewer than 200,000 people in the United States. Upon receipt of orphan drug designation from the FDA, the sponsor is eligible for tax credits of up to 50% for qualified clinical trial expenses, the ability to apply for annual grant funding, waiver of PDUFA application fee, and upon approval, the potential for seven years of market exclusivity for the orphan-designated product for the orphan-designated indication. In October 2009, the FDA granted orphan drug designation to vosaroxin for treatment of AML.

In April 2012, the European Commission granted orphan drug designation to vosaroxin for the treatment of AML, which may provide for 10 years of marketing exclusivity for this indication in Europe. In the European Union, orphan status is available for therapies addressing conditions that affect five or fewer out of 10,000 people. The marketing exclusivity period can be reduced to six years if, at the end of the fifth year, available evidence establishes that the product is sufficiently profitable not to justify maintenance of market exclusivity.

Fast Track Designation

The FDA's fast track program is intended to facilitate the development, and to expedite the review, of drugs that are intended for the treatment of a serious or life-threatening condition for which there is no effective treatment and demonstrate the potential to address unmet medical needs for the condition.

With fast track designation, the FDA may initiate review of sections of an NDA before the application is complete. This rolling review is available if the applicant provides and the FDA approves a schedule for the submission of the remaining information and the applicant pays applicable user fees. However, the time period specified in the PDUFA, which governs the time period goals the FDA has committed to reviewing an application, does not begin until the complete application is submitted. Additionally, the fast track designation may be withdrawn by the FDA if the FDA believes that the designation is no longer supported by data emerging in the clinical trial process.

In some cases, a fast track designated drug candidate may also qualify for priority review. Under FDA policies, a drug candidate is eligible for priority review, or, under Prescription Drug User Fee Act V, review within eight months from the time a complete NDA is submitted (a six-month review period begins at the conclusion of the 60-day filing review period that begins on the date of FDA receipt of the submission), if the drug candidate provides a significant improvement compared to marketed drugs in the treatment, diagnosis or prevention of a disease. A fast track designated drug candidate would ordinarily meet the FDA's criteria for priority review.

In February 2011, the FDA granted fast track designation to vosaroxin for the potential treatment of relapsed or refractory AML in combination with cytarabine. We do not know whether vosaroxin or our future drug candidates, if any, will receive a priority review designation or, if a priority designation is received, whether that review or approval will be faster than conventional FDA procedures, or the ultimate impact, if any, of the fast track designation on the timing or likelihood of FDA approval of vosaroxin or our future drug candidates, if any.

Satisfaction of FDA regulations and approval requirements or similar requirements of foreign regulatory agencies typically takes several years, and the actual time required may vary substantially based upon the type, complexity and novelty of the product or disease. Typically, if a drug candidate is intended to treat a chronic disease, as is the case with vosaroxin, safety and efficacy data must be gathered over an extended period of time. Government regulation may delay or prevent marketing of drug candidates for a considerable period of time and impose costly procedures upon our activities. The FDA or any other regulatory agency may not grant approvals for new indications for our drug candidates on a timely basis, or at all. Even if a drug candidate receives regulatory approval, the approval may be significantly limited to specific disease states, patient populations and dosages. Further, even after regulatory approval is obtained, later discovery of previously unknown problems with a drug may result in restrictions on the drug or even complete withdrawal of the drug from the market. Delays in obtaining, or failures to obtain, regulatory approvals for any of our drug candidates would harm our business. In addition, we cannot predict what adverse governmental regulations may arise from future U.S. or foreign governmental action.

Other Regulatory Requirements

Any drugs manufactured or distributed by us, Biogen Idec, Millennium, or our potential future licensees or collaboration partners, if any, pursuant to FDA approvals are subject to continuing regulation by the FDA, including recordkeeping requirements and reporting of adverse experiences associated with the drug. Drug manufacturers and their subcontractors are required to register with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA and certain state agencies for compliance with ongoing regulatory requirements, including cGMPs, which impose certain procedural and documentation requirements upon us and our third-party manufacturers. Failure to comply with the statutory and regulatory requirements can

subject a manufacturer to possible legal or regulatory action, such as warning letters, suspension of manufacturing, seizure of product, injunctive action or possible civil penalties.

The FDA closely regulates the post-approval marketing and promotion of drugs, including standards and regulations for direct-to-consumer advertising, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the Internet. A company can make only those claims relating to safety and efficacy that are approved by the FDA. Failure to comply with these requirements can result in adverse publicity, warning letters, corrective advertising and potential civil and criminal penalties. Physicians may prescribe legally available drugs for uses that are not described in the drug's labeling and that differ from those tested by us and approved by the FDA. Such off-label uses are common across medical specialties, including cancer therapy. Physicians may believe that such off-label uses are the best treatment for many patients in varied circumstances. The FDA does not regulate the behavior of physicians in their choice of treatments. The FDA does, however, impose stringent restrictions on manufacturers' communications regarding off-label use.

Reimbursement

Sales of any of our product candidates, if approved, will depend, in part, on the extent to which the costs of the products will be covered by third-party payors, including government health programs such as Medicare and Medicaid, commercial health insurers and managed care organizations. These third-party payors are increasingly challenging the prices charged for medical products and services. Additionally, the containment of healthcare costs has become a priority of federal and state governments, and the prices of drugs have been a focus in this effort. In particular, government entities have shown significant interest in implementing cost-containment programs, including price controls, restrictions on reimbursement and requirements for substitution of generic products. Adoption of price controls and cost-containment measures, and adoption of more restrictive policies in jurisdictions with existing controls and measures, could further limit our ability to achieve significant net sales and results. If these third-party payors do not consider our products to be cost-effective compared to other available therapies, they may not cover our products after approval as a benefit under their plans or, if they do, the level of payment may not be sufficient to allow us to sell our products on a profitable basis.

In the U.S., the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or the MMA, imposes requirements for the distribution and pricing of prescription drugs for Medicare beneficiaries. Under Part D of the MMA, Medicare beneficiaries may enroll in prescription drug plans offered by private entities which will provide coverage of outpatient prescription drugs. Part D prescription drug plan sponsors are not required to pay for all covered Part D drugs, and each drug plan can develop its own drug formulary that identifies which drugs it will cover and at what tier or level. However, Part D prescription drug formularies must include drugs within each therapeutic category and class of covered Part D drugs, though not necessarily all the drugs in each category or class. Government payment for some of the costs of prescription drugs may increase demand for products for which we receive marketing approval. However, any negotiated prices for our products covered by a Part D prescription drug plan will likely be lower than the prices we might otherwise obtain. Moreover, while the MMA applies only to drug benefits for Medicare beneficiaries, private payors often follow Medicare coverage policy and payment limitations in setting their own payment rates. Any reduction in payment that results from the MMA may result in a similar reduction in payments from non-governmental payors.

Under the American Recovery and Reinvestment Act of 2009, funding has been made available for the federal government to compare the effectiveness of different treatments for the same illness. Although the results of the comparative effectiveness studies are not intended to mandate coverage policies for public or private payors, such a result is a likely outcome of the law and thus it is unclear what, if any, effect the research will have on the sales of our product candidates, or if any such product or the condition that it is intended to treat is the subject of a study.

The Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010, collectively, the Affordable Care Act or ACA, is expected to have a significant

impact on the health care industry. ACA is expected to expand coverage for the uninsured while at the same time maintaining overall healthcare costs. With regard to pharmaceutical products, ACA is expected to expand and increase industry rebates for drugs covered under Medicaid programs and make changes to the coverage requirements under the Medicare Part D program. We cannot predict the impact of ACA on pharmaceutical companies as many of the ACA reforms remain subject to the promulgation of implementing regulations. In addition, although the United States Supreme Court recently upheld the constitutionality of most of the ACA, some states have indicated that they intend to not implement certain sections of the ACA, and some members of the U.S. Congress are still working to repeal the ACA. These challenges add to the uncertainty of the legislative changes enacted as part of ACA.

We expect that there will continue to be a number of federal and state proposals to implement governmental pricing controls and limit the growth of healthcare costs, including the cost of prescription drugs. At the present time, Medicare is prohibited from negotiating directly with pharmaceutical companies for drugs. The adoption of other legislative or regulatory proposals could have a material adverse effect on our business, financial condition and profitability.

The Physician Payment Sunshine Act

The Physician Payment Sunshine Act, or Sunshine Act, which was enacted as part of ACA, requires applicable manufacturers of drugs, devices, biologicals, or medical supplies covered under Medicare, Medicaid or the Children's Health Insurance Program, to report annually to the Secretary of the Department of Health and Human Services payments or other transfers of value made by that entity, or by a third party as directed by that entity, to physicians and teaching hospitals, or to third parties on behalf of physicians or teaching hospitals, during the course of the preceding calendar year. Failure to comply with the reporting requirements can result in significant civil monetary penalties.

Foreign Regulation

In addition to regulations in the United States, we are subject to foreign regulations governing clinical trials and commercial sales and distribution of vosaroxin or our future drug candidates, if any. Our VALOR trial enrolled patients in Europe, Canada, South Korea, Australia and New Zealand. We may in the future initiate clinical trials in other countries throughout the world. Whether or not we obtain FDA approval for a product, we must obtain approval of a product by the comparable regulatory authorities of foreign countries before we can commence clinical trials or marketing of the product in those countries. The approval process varies from country to country, and the time may be longer or shorter than that required for FDA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

Under European Union regulatory systems, permission to conduct clinical research is granted by the Competent Authority of each European Member State, or MS, and the applicable Ethics Committees, or EC, through the submission of a Clinical Trial Application. An EC in the European Union serves the same function as an IRB in the United States. The review times vary by MS but may not exceed 60 days. The EC has a maximum of 60 days to give its opinion on the acceptability of the Clinical Trial Application to both the governing MS and the sponsor applicant. If the application is deemed acceptable, the MS informs the applicant (or does not within the 60-day window inform the applicant of non-acceptance) and the company may proceed with the clinical trial.

Under the European Union regulatory systems, marketing authorizations for drugs that have been granted orphan drug designation for the related indication must be submitted under a centralized authorization procedure. The centralized procedure provides for the grant of a single marketing authorization that is valid for all European Union member states.

Under the Canadian regulatory system, Health Canada is the regulatory body that governs the sale of drugs and their use in clinical trials. Accordingly, any company that wishes to conduct a clinical trial in Canada

must submit a clinical trial application to Health Canada. Health Canada reviews the application and notifies the company within 30 days if the application is found to be deficient. If the application is deemed acceptable, Health Canada will issue a no objection letter to the company within the 30-day review period which means the company may proceed with its clinical trial(s).

In addition to regulations in the United States, the European Union and Canada, we will be subject to a variety of other foreign regulations governing clinical trials and commercial distribution of our product candidates. Our ability to sell drugs will also depend on the availability of reimbursement from government and private insurance companies.

Research and Development Expenses

We incurred $28.9 million, $29.2 million and $22.6 million of research and development expenses in 2013, 2012 and 2011, respectively, primarily related to the development of vosaroxin. We expect to continue to incur significant development expenses related to the development of vosaroxin.

Environment

We have made, and will continue to make, expenditures for environmental compliance and protection. We do not expect that such expenditures will have a material effect on our capital expenditures or results of operations in the foreseeable future.

Employees

As of December 31, 2013, our workforce consisted of 32 full-time equivalent employees. Of our total workforce, 20 are engaged in research and development and 12 are engaged in general and administrative functions. We have no collective bargaining agreements with our employees, and we have not experienced any work stoppages.

Corporate Background

We were incorporated in Delaware in February 1998. Our offices are headquartered at 395 Oyster Point Boulevard, Suite 400, South San Francisco, California 94080, and our telephone number is (650) 266-3500. Our website address is *www.sunesis.com*. Information contained in, or accessible through, our website is not incorporated by reference into and does not form a part of this report.

Available Information

Our website is located at *www.sunesis.com*. The contents of our website are not intended to be incorporated by reference into this Annual Report on Form 10-K or in any other report or document we file with the Securities and Exchange Commission, or SEC, and any references to our websites are intended to be inactive textual references only. The following filings are available through our website after we file them with the SEC: Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, as well as any amendments to such reports and all other filings pursuant to Section 13(a) or 15 (d) of the Securities Act. These filings are also available for download free of charge on our investor relations website. Additionally, copies of materials filed by us with the SEC may be accessed at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549 or at www.sec.gov. For information about the SEC's Public Reference Room, contact 1-800-SEC-0330.

ITEM 1A. *RISK FACTORS*

Investing in our common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below and all information contained in this Annual Report on Form 10-K in weighing a decision to purchase our common stock. If any of the possible adverse events described below actually occurs, we may be unable to conduct our business as currently planned and our financial condition and operating results could be adversely affected. Additional risks not presently known to us or that we currently believe are immaterial may also significantly impair our business operations. In addition, the trading price of our common stock could decline due to the occurrence of any of these risks, and you may lose all or part of your investment. Please see "Special Note Regarding Forward-Looking Statements."

Risks Related to Our Business

We need to raise substantial additional funding to complete the development and potential commercialization of vosaroxin.

We believe that including our $39.3 million in cash and investments held as of December 31, 2013, we currently have the resources to fund our operations at least through 2014.

However, we will need to raise substantial additional capital to:

- complete the development and potential commercialization of vosaroxin in AML;
- fund additional clinical trials of vosaroxin and seek regulatory approvals;
- expand our development activities;
- implement additional internal systems and infrastructure; and
- build or access commercialization and additional manufacturing capabilities and supplies.

Our future funding requirements and sources will depend on many factors, including but not limited to:

- the rate of progress and cost of our clinical trials, including the VALOR trial in particular;
- the need for additional or expanded clinical trials;
- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which we may enter;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of our other development activities, including our other clinical programs and in-license agreements;
- the costs associated with building or accessing commercialization and additional manufacturing capabilities and supplies;
- the costs of acquiring or investing in businesses, product candidates and technologies, if any;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;

- the effect of competing technological and market developments; and
- the costs, if any, of supporting our arrangements with Biogen Idec, Millennium or any potential future licensees or partners.

Until we can generate a sufficient amount of licensing, collaboration or product revenue to finance our cash requirements, which we may never do, we expect to finance future cash needs primarily through warrant exercises, equity issuances, debt arrangements, one or more possible licenses, collaborations or other similar arrangements with respect to development and/or commercialization rights to vosaroxin, or a combination of the above. Any issuance of convertible debt securities, preferred stock or common stock may be at a discount from the then-current trading price of our common stock. If we issue additional common or preferred stock or securities convertible into common or preferred stock, our stockholders will experience additional dilution, which may be significant. Further, we do not know whether additional funding will be available on acceptable terms, or at all. If we are unable to raise substantial additional funding on acceptable terms, or at all, we will be forced to delay or reduce the scope of our vosaroxin development program, potentially including any regulatory filings related to the VALOR trial, and/or limit or cease our operations.

We have incurred losses since inception and anticipate that we will continue to incur losses for the foreseeable future. We may not ever achieve or sustain profitability.

We are not profitable and have incurred losses in each year since our inception in 1998. Our net losses for the years ended December 31, 2013, 2012 and 2011 were $34.6 million, $44.0 million and $20.1 million, respectively. As of December 31, 2013, we had an accumulated deficit of $479.7 million. We do not currently have any products that have been approved for marketing, and we continue to incur substantial development and general and administrative expenses related to our operations. We expect to continue to incur losses for the foreseeable future, and we expect these losses to increase significantly as the VALOR trial progresses, as we seek regulatory approvals for vosaroxin if the VALOR trial is successful, and as we commercialize vosaroxin, if approved. Our losses, among other things, have caused and will continue to cause our stockholders' equity and working capital to decrease.

To date, we have derived substantially all of our revenue from license and collaboration agreements. We currently have two agreements, the Biogen Idec 2nd ARCA and the Amended Millennium Agreement, which each include certain pre-commercialization event-based and royalty payments. We cannot predict whether we will receive any such payments under these agreements in the foreseeable future, or at all.

We also do not anticipate that we will generate revenue from the sale of products until at least 2015, if at all. In the absence of additional sources of capital, which may not be available to us on acceptable terms, or at all, the development of vosaroxin or future product candidates, if any, may be reduced in scope, delayed or terminated. If our product candidates or those of our collaborators fail in clinical trials or do not gain regulatory approval, or if our future products do not achieve market acceptance, we may never become profitable. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods.

The development of vosaroxin could be halted or significantly delayed for various reasons; our clinical trials for vosaroxin may not demonstrate safety or efficacy or lead to regulatory approval.

Vosaroxin is vulnerable to the risks of failure inherent in the drug development process. We may need to conduct significant additional preclinical studies and clinical trials before we can attempt to demonstrate that vosaroxin is safe and effective to the satisfaction of the FDA and other regulatory authorities. Failure can occur at any stage of the development process, and successful preclinical studies and early clinical trials do not ensure that later clinical trials will be successful. A number of companies in the pharmaceutical industry have suffered significant setbacks in advanced clinical trials, even after obtaining promising results in earlier trials.

For example, we terminated two Phase 2 clinical trials of vosaroxin in small cell and non-small cell lung cancer. If our clinical trials result in unacceptable toxicity or lack of efficacy, we may have to terminate them. If clinical trials are halted, or if they do not show that vosaroxin is safe and effective in the indications for which we are seeking regulatory approval, our future growth will be limited and we may not have any other product candidates to develop.

We do not know whether our ongoing clinical trials or any other future clinical trials with vosaroxin or any of our product candidates, including the VALOR trial in particular, will be completed on schedule, or at all, or whether our ongoing or planned clinical trials will begin or progress on the time schedule we anticipate. The commencement of future clinical trials could be substantially delayed or prevented by several factors, including:

- delays or failures to raise additional funding;
- results of meetings with the FDA and/or other regulatory bodies;
- a limited number of, and competition for, suitable patients with particular types of cancer for enrollment in our clinical trials;
- delays or failures in obtaining regulatory approval to commence a clinical trial;
- delays or failures in obtaining sufficient clinical materials;
- delays or failures in obtaining approval from independent institutional review boards to conduct a clinical trial at prospective sites; or
- delays or failures in reaching acceptable clinical trial agreement terms or clinical trial protocols with prospective sites.

The completion of our clinical trials, including the VALOR trial, could be substantially delayed or prevented by several factors, including:

- delays or failures to raise additional funding;
- slower than expected rates of patient recruitment and enrollment;
- failure of patients to complete the clinical trial;
- delays or failures in reaching the number of events pre-specified in the trial design;
- the need to expand the clinical trial;
- delays or failures in obtaining sufficient clinical materials, including vosaroxin, its matching placebo and cytarabine;
- unforeseen safety issues;
- lack of efficacy during clinical trials;
- inability or unwillingness of patients or clinical investigators to follow our clinical trial protocols; and
- inability to monitor patients adequately during or after treatment.

Additionally, our clinical trials may be suspended or terminated at any time by the FDA, other regulatory authorities, or ourselves. Any failure to complete or significant delay in completing clinical trials for our product candidates could harm our financial results and the commercial prospects for our product candidates.

We rely on a limited number of third-party manufacturers that are capable of manufacturing the vosaroxin active pharmaceutical ingredient, or API, and finished drug product, or FDP, to supply us with our vosaroxin API and FDP. If we fail to obtain sufficient quantities of these materials, the development and potential commercialization of vosaroxin could be halted or significantly delayed.

We do not currently own or operate manufacturing facilities and lack the capability to manufacture vosaroxin on a clinical or commercial scale. As a result, we rely on third parties to manufacture vosaroxin API and FDP. The vosaroxin API is classified as a cytotoxic substance, limiting the number of available manufacturers for both API and FDP.

We currently rely on two contract manufacturers for the vosaroxin API. We also currently rely on a single contract manufacturer to formulate the vosaroxin API and fill and finish vials of the vosaroxin FDP. If our third-party vosaroxin API or FDP manufacturers are unable or unwilling to produce the vosaroxin API or FDP we require, we would need to establish arrangements with one or more alternative suppliers. However, establishing a relationship with an alternative supplier would likely delay our ability to produce vosaroxin API or FDP. Our ability to replace an existing manufacturer would also be difficult and time consuming because the number of potential manufacturers is limited and the FDA must approve any replacement manufacturer before it can be an approved commercial supplier. Such approval would require new testing, stability programs and compliance inspections. It may be difficult or impossible for us to identify and engage a replacement manufacturer on acceptable terms in a timely manner, or at all. We expect to continue to depend on third-party contract manufacturers for all our vosaroxin API and FDP needs for the foreseeable future.

Vosaroxin requires precise, high quality manufacturing. For example, in the past, we observed visible particles during stability studies of two vosaroxin FDP lots which resulted from process impurities in the vosaroxin API that, when formulated into the packaged vial of the vosaroxin FDP, resulted in the formation of these particles. We have since addressed this issue by the implementation of a revised manufacturing process to control the impurities and thereby minimize particle formation, however, there is no assurance that similar issues will not arise in the future as we prepare for regulatory approval and potential commercialization of vosaroxin.

In addition to process impurities, the failure of our contract manufacturers to achieve and maintain high manufacturing standards in compliance with current Good Manufacturing Practice, or cGMP, regulations could result in other manufacturing errors leading to patient injury or death, product recalls or withdrawals, delays or interruptions of production or failures in product testing or delivery. Although contract manufacturers are subject to ongoing periodic unannounced inspection by the FDA and corresponding state agencies to ensure strict compliance with cGMP and other applicable government regulations and corresponding foreign standards, any such performance failures on the part of a contract manufacturer could result in the delay or prevention of filing or approval of marketing applications for vosaroxin, cost overruns or other problems that could seriously harm our business. This would deprive us of potential product revenue and result in additional losses.

To date, vosaroxin has been manufactured in quantities appropriate for preclinical studies and clinical trials, including the manufacture of registration batches of API and FDP. Prior to submission for FDA review and approval for commercial sale, we will need to perform process validation studies on API batches manufactured for commercial launch. If the results of these process validation studies do not meet preset criteria, the regulatory approval or commercial launch of vosaroxin may be delayed.

The failure to enroll patients for clinical trials may cause delays in developing vosaroxin.

We may encounter delays if we are unable to enroll enough patients to complete clinical trials of vosaroxin. We completed enrollment of the VALOR trial in September 2013, but we may be required to enroll patients for Phase 4 clinical trials. Patient enrollment depends on many factors, including the size of the patient population, the nature of the protocol, the proximity of patients to clinical sites, the number and nature of competing treatments and ongoing clinical trials of competing drugs for the same indication, and the eligibility

criteria for the trial. Patients participating in our trials may elect to leave our trials and switch to alternative treatments that are available to them, either commercially or on an expanded access basis, or in other clinical trials. Competing treatments include nucleoside analogs, anthracyclines and hypomethylating agents. Moreover, when one product candidate is evaluated in multiple clinical trials simultaneously, patient enrollment in ongoing trials can be adversely affected by negative results from completed trials.

The results of preclinical studies and clinical trials may not satisfy the requirements of the FDA or other regulatory agencies.

Prior to receiving approval to commercialize vosaroxin or future product candidates, if any, in the United States or internationally, we must demonstrate with substantial evidence from well-controlled clinical trials, to the satisfaction of the FDA and other regulatory authorities, that such product candidates are safe and effective for their intended uses. The results from preclinical studies and clinical trials can be interpreted in different ways, and the favorable results from previous trials of vosaroxin may not be experienced in the VALOR trial. Even if we believe the preclinical or clinical data are promising, such data may not be sufficient to support approval by the FDA and other regulatory authorities. In addition, although we believe that our discussions with the FDA support the potential approval of vosaroxin for the treatment of AML based on positive results from the VALOR trial without the need to conduct additional clinical trials, the FDA has substantial discretion in the approval process and may not grant approval based on data from this trial.

We rely on third parties to conduct our clinical trials. If these third parties do not successfully carry out their contractual duties or fail to meet expected deadlines, we may be unable to obtain regulatory approval for, or commercialize, vosaroxin.

We rely on third parties, such as contract research organizations, medical institutions, clinical investigators and contract laboratories, to conduct our planned and existing clinical trials for vosaroxin. If the third parties conducting our clinical trials do not perform their contractual duties or obligations, do not meet expected deadlines or need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical trial protocols or for any other reason, we may need to enter into new arrangements with alternative third parties and our clinical trials may be extended, delayed or terminated or may need to be repeated, and we may not be able to obtain regulatory approval for or commercialize the product candidate being tested in such trials.

We expect to expand our development capabilities, and any difficulties hiring or retaining key personnel or managing this growth could disrupt our operations.

We are highly dependent on the principal members of our development staff. We expect to expand our research and development capabilities by increasing expenditures in these areas, hiring additional employees and potentially expanding the scope of our current operations. Future growth will require us to continue to implement and improve our managerial, operational and financial systems and continue to retain, recruit and train additional qualified personnel, which may impose a strain on our administrative and operational infrastructure. The competition for qualified personnel in the biopharmaceutical field is intense. We are highly dependent on our continued ability to attract, retain and motivate highly qualified management and specialized personnel required for clinical development. Due to our limited resources, we may not be able to effectively manage any expansion of our operations or recruit and train additional qualified personnel. If we are unable to retain key personnel or manage our growth effectively, we may not be able to implement our business plan.

If we are sued for infringing intellectual property rights of third parties, litigation will be costly and time consuming and could prevent us from developing or commercializing vosaroxin.

Our commercial success depends on not infringing the patents and other proprietary rights of third parties and not breaching any collaboration or other agreements we have entered into with regard to our technologies

and product candidates. If a third party asserts that we are using technology or compounds claimed in issued and unexpired patents owned or controlled by the third party, we may need to obtain a license, enter into litigation to challenge the validity of the patents or incur the risk of litigation in the event that a third party asserts that we infringe its patents.

If a third party asserts that we infringe its patents or other proprietary rights, we could face a number of challenges that could seriously harm our competitive position, including:

- infringement and other intellectual property claims, which would be costly and time consuming to litigate, whether or not the claims have merit, and which could delay the regulatory approval process and divert management's attention from our business;
- substantial damages for past infringement, which we may have to pay if a court determines that vosaroxin or any future product candidates infringe a third party's patent or other proprietary rights;
- a court order prohibiting us from selling or licensing vosaroxin or any future product candidates unless a third party licenses relevant patent or other proprietary rights to us, which it is not required to do; and
- if a license is available from a third party, we may have to pay substantial royalties or grant cross-licenses to our patents or other proprietary rights.

If our competitors develop and market products that are more effective, safer or less expensive than vosaroxin, our commercial opportunities will be negatively impacted.

The life sciences industry is highly competitive, and we face significant competition from many pharmaceutical, biopharmaceutical and biotechnology companies that are researching, developing and marketing products designed to address the treatment of cancer, including AML and MDS. Many of our competitors have significantly greater financial, manufacturing, marketing and drug development resources than we do. Large pharmaceutical companies in particular have extensive experience in the clinical testing of, obtaining regulatory approvals for, and marketing drugs.

We believe that our ability to successfully compete in the marketplace with vosaroxin and any future product candidates, if any, will depend on, among other things:

- our ability to develop novel compounds with attractive pharmaceutical properties and to secure, protect and maintain intellectual property rights based on our innovations;
- the efficacy, safety and reliability of our product candidates;
- the speed at which we develop our product candidates;
- our ability to design and successfully execute appropriate clinical trials;
- our ability to maintain a good relationship with regulatory authorities;
- our ability to obtain, and the timing and scope of, regulatory approvals;
- our ability to manufacture and sell commercial quantities of future products to the market;
- the availability of reimbursement from government agencies and private insurance companies; and
- acceptance of future products by physicians and other healthcare providers.

Vosaroxin is a small molecule therapeutic that will compete with other drugs and therapies currently used for AML, such as nucleoside analogs, anthracyclines, hypomethylating agents, Flt-3 inhibitors, other inhibitors of topoisomerase II, and other novel agents. Additionally, other compounds currently in development could become potential competitors of vosaroxin, if approved for marketing.

We expect competition for vosaroxin for the treatment of AML and other potential future indications to increase as additional products are developed and approved in various patient populations. If our competitors market products that are more effective, safer or less expensive than vosaroxin or our other future products, if any, or that reach the market sooner we may not achieve commercial success or substantial market penetration. In addition, the biopharmaceutical industry is characterized by rapid change. Products developed by our competitors may render vosaroxin or any future product candidates obsolete.

Our proprietary rights may not adequately protect vosaroxin or future product candidates, if any.

Our commercial success will depend on our ability to obtain patents and maintain adequate protection for vosaroxin and any future product candidates in the United States and other countries. We own, co-own or have rights to a significant number of issued U.S. and foreign patents and pending U.S. and foreign patent applications. We will be able to protect our proprietary rights from unauthorized use by third parties only to the extent that our proprietary technologies and future products are covered by valid and enforceable patents or are effectively maintained as trade secrets or are subject to marketing exclusivity administered by regulatory authorities.

We apply for patents covering both our technologies and product candidates, as we deem appropriate. However, we may fail to apply for patents on important technologies or product candidates in a timely fashion, or at all. Our existing patents and any future patents we obtain may not be sufficiently broad, valid, or enforceable to prevent others from practicing our technologies or from developing competing products and technologies. In addition, we generally do not exclusively control the patent prosecution of subject matter that we license to or from others. Accordingly, in such cases we are unable to exercise the same degree of control over this intellectual property as we would over our own. Moreover, the patent positions of biopharmaceutical companies are highly uncertain and involve complex legal and factual questions for which important legal principles remain unresolved. As a result, the scope, validity and enforceability of patents cannot be predicted with certainty. In addition, we do not know whether:

- we, our licensors or our collaboration partners were the first to make the inventions covered by each of our issued patents and pending patent applications;
- we, our licensors or our collaboration partners were the first to file patent applications for these inventions;
- others will independently develop similar or alternative technologies or duplicate any of our technologies;
- any of our or our licensors' or our collaboration partners' pending patent applications will result in issued patents;
- any of our, our licensors' or our collaboration partners' patents will be valid or enforceable;
- because of differences in patent laws of countries, any patent granted in one country or region will be granted in another, or, if so, have the same or a different scope;
- any patents issued to us, our licensors or our collaboration partners will provide us with any competitive advantages, or will be challenged by third parties;

- we will develop additional proprietary technologies that are patentable; or
- the patents of others will have an adverse effect on our business.

We also rely on trade secrets to protect some of our technology, especially where we do not believe patent protection is appropriate or obtainable. However, trade secrets are difficult to maintain. While we use reasonable efforts to protect our trade secrets, our or our collaboration partners' employees, consultants, contractors or scientific and other advisors, or those of our licensors, may unintentionally or willfully disclose our proprietary information to competitors. Enforcement of claims that a third party has illegally obtained and is using trade secrets is expensive, time consuming and uncertain. In addition, foreign courts are sometimes less willing than U.S. courts to protect trade secrets. If our competitors independently develop equivalent knowledge, methods and know-how, we would not be able to assert our trade secret protection against them and our business could be harmed.

The initial composition-of-matter patents covering vosaroxin are due to expire in 2015. Even if vosaroxin is approved by the FDA and foreign equivalents thereof, we may not be able to recover our development costs prior to the expiration of these patents.

The vosaroxin composition-of-matter is covered by U.S. Patent No. 5,817,669 and its counterpart patents in 43 foreign jurisdictions. This patent is due to expire in October 2015, and most of its foreign counterparts are due to expire in June 2015. In November 2010, the U.S. Patent and Trademark Office, or USPTO, granted us a patent covering pharmaceutical compositions of vosaroxin, including the formulation used in our VALOR trial. In January 2011, the European Patent Office, or EPO, granted us a similar patent, which has been validated in multiple European Patent Convention, or EPC, member states. These patents are due to expire in 2025. In December 2009, the EPO granted us a patent covering combinations of vosaroxin with cytarabine, which is due to expire in 2025 in multiple EPC member states. In June 2011, the USPTO granted us a similar patent, which is due to expire in 2026. In August 2011, the USPTO granted us a patent covering methods of use of vosaroxin at clinically relevant dose ranges and schedules for the treatment of leukemia. This patent has been granted a substantial patent term adjustment, which extends its term through late 2026. In February 2012, the USPTO granted us a patent covering certain vosaroxin hydrate forms, which is due to expire in 2028. In March 2012 and November 2013, the USPTO granted us patents covering certain compositions related to vosaroxin, which are due to expire in 2030. In July 2013, the USPTO granted us a patent covering certain chemical synthetic method steps that can be used in the manufacture of vosaroxin. This patent has been granted a substantial patent term adjustment, which extends its term to 2031. In November 2013, the USPTO granted us a patent covering certain methods of use of vosaroxin to treat acute myelogenous leukemia, which is due to expire in 2027. In September 2013, Japan and Australia granted us patents in the same family, which will expire in 2026.

Vosaroxin must undergo extensive clinical trials before it can be approved by the FDA. We do not know when, if ever, vosaroxin will be approved by the FDA. Even if vosaroxin is approved by the FDA in the future, we may not have sufficient time to commercialize our vosaroxin product to enable us to recover our development costs prior to the expiration of the U.S. and foreign patents covering vosaroxin. We do not know whether patent term extensions and data exclusivity periods will be available in the future for any or all of the patents we own or have licensed. Our obligation to pay royalties to Dainippon, the company from which we licensed vosaroxin, may extend beyond the patent expiration, which would further erode the profitability of this product. In addition, our potential obligation to pay RPI royalties pursuant to the Royalty Agreement could also further erode the profitability of this product.

Any future workforce and expense reductions may have an adverse impact on our internal programs, our ability to hire and retain key personnel and may be distracting to management.

We have, in the past, implemented a number of workforce reductions. Depending on our need for additional funding and expense control, we may be required to implement further workforce and expense

reductions in the future. Further workforce and expense reductions could result in reduced progress on our internal programs. In addition, employees, whether or not directly affected by a reduction, may seek future employment with our business partners or competitors. Although our employees are required to sign a confidentiality agreement at the time of hire, the confidential nature of certain proprietary information may not be maintained in the course of any such future employment. Further, we believe that our future success will depend in large part upon our ability to attract and retain highly skilled personnel. We may have difficulty retaining and attracting such personnel as a result of a perceived risk of future workforce and expense reductions. In addition, the implementation of expense reduction programs may result in the diversion of efforts of our executive management team and other key employees, which could adversely affect our business.

We may be subject to damages resulting from claims that we or our employees have wrongfully used or disclosed alleged trade secrets of our employees' former employers.

Many of our employees were previously employed at biotechnology or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that we or our employees have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers. Litigation may be necessary to defend against these claims. If we fail in defending such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. A loss of key personnel or the work product of current or former personnel could hamper or prevent our ability to commercialize vosaroxin, which could severely harm our business. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

We currently have limited marketing staff and no sales or distribution organization. If we are unable to develop a sales and marketing and distribution capability on our own, by contracting with third parties or through collaborations with marketing partners, we will not be successful in commercializing vosaroxin.

We currently have no sales or distribution capabilities and a limited marketing staff. We intend to establish our own sales and marketing organization with technical expertise and supporting distribution capabilities to commercialize vosaroxin in North America, and potentially in Europe, which will be expensive and time consuming. Any failure or delay in the development of our internal or subcontracted sales, marketing and distribution capabilities would adversely impact the commercialization of these products. We plan to collaborate with third parties that have direct sales forces and established distribution systems in certain territories as part of the commercialization of vosaroxin. To the extent that we enter into co-promotion or other licensing arrangements, our product revenue is likely to be lower than if we marketed or sold vosaroxin directly. In addition, any revenue we receive will depend upon the efforts of third parties, which may not be successful and are only partially within our control. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize vosaroxin. If we are not successful in commercializing vosaroxin or our future product candidates, if any, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we may incur significant additional losses.

We depend on various consultants and advisors for the success and continuation of our development efforts.

We work extensively with various consultants and advisors, who provide advice and/or services in various business and development functions, including clinical development, operations and strategy, regulatory matters, biostatistics, legal and finance. The potential success of our drug development programs depends, in part, on continued collaborations with certain of these consultants and advisors. Our consultants and advisors are not our employees and may have commitments and obligations to other entities that may limit their availability to us. We do not know if we will be able to maintain such relationships or that such consultants and advisors will not enter into other arrangements with competitors, any of which could have a detrimental impact on our development objectives and our business.

If conflicts of interest arise between our current or future licensees or collaboration partners, if any, and us, any of them may act in their self-interest, which may be adverse to our interests.

If a conflict of interest arises between us and one or more of our current or potential future licensees or collaboration partners, if any, they may act in their own self-interest or otherwise in a way that is not in the interest of our company or our stockholders. Biogen Idec, Millennium, or potential future licensees or collaboration partners, if any, are conducting or may conduct product development efforts within the disease area that is the subject of a license or collaboration with our company. In current or potential future licenses or collaborations, if any, we have agreed or may agree not to conduct, independently or with any third party, any research that is competitive with the research conducted under our licenses or collaborations. Our licensees or collaboration partners, however, may develop, either alone or with others, products in related fields that are competitive with the product candidates that are the subject of these licenses or collaborations. Competing products, either developed by our licensees or collaboration partners or to which our licensees or collaboration partners have rights, may result in their withdrawal of support for a product candidate covered by the license or collaboration agreement.

If one or more of our current or potential future licensees or collaboration partners, if any, were to breach or terminate their license or collaboration agreements with us or otherwise fail to perform their obligations thereunder in a timely manner, the preclinical or clinical development or commercialization of the affected product candidates could be delayed or terminated. We do not know whether our licensees or collaboration partners will pursue alternative technologies or develop alternative product candidates, either on their own or in collaboration with others, including our competitors, as a means for developing treatments for the diseases targeted by licenses or collaboration agreements with our company.

Compliance with changing regulation of corporate governance and public disclosure may result in additional expenses.

Changing laws, regulations and standards relating to corporate governance and public disclosure may create uncertainty regarding compliance matters. New or changed laws, regulations and standards are subject to varying interpretations in many cases. As a result, their application in practice may evolve over time. We are committed to maintaining high standards of corporate governance and public disclosure. Complying with evolving interpretations of new or changed legal requirements may cause us to incur higher costs as we revise current practices, policies and procedures, and may divert management time and attention from potential revenue-generating activities to compliance matters. If our efforts to comply with new or changed laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to practice, our reputation may also be harmed. Further, our board members, chief executive officer and chief financial officer could face an increased risk of personal liability in connection with the performance of their duties. As a result, we may have difficulty attracting and retaining qualified board members and executive officers, which could harm our business.

Raising funds through lending arrangements or revenue participation agreements may restrict our operations or produce other adverse results.

Our loan and security agreement, or the Loan Agreement, with Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation, or collectively the Lenders, which we entered into on October 18, 2011, contains a variety of affirmative and negative covenants, including required financial reporting, limitations on certain dispositions of assets, limitations on the incurrence of additional debt and other requirements. To secure our performance of our obligations under this Loan Agreement, on October 18, 2011, we granted a perfected first priority security interest in substantially all of our assets, other than intellectual property assets, to the Lenders. Additionally, following the purchase of the revenue participation right by RPI on September 18, 2012, we granted both the Lenders and RPI a security interest in certain of our assets, including our intellectual property related to vosaroxin, which may only be perfected following first product approval in any country or

territory. The Lenders will retain a senior position to RPI's security interest for so long as any indebtedness under the Loan Agreement remains outstanding. Our failure to comply with the covenants in the Loan Agreement, the occurrence of a material impairment in our prospect of repayment or in the perfection or priority of the Lender's lien on our assets, as determined by the Lenders, or the occurrence of certain other specified events could result in an event of default that, if not cured or waived, could result in the acceleration of all or a substantial portion of our debt, potential foreclosure on our assets and other adverse results.

In addition, following the purchase of the revenue participation right by RPI, we are required to pay RPI a specified percentage of any net sales of vosaroxin. If we fail to make timely payments due to RPI under the Royalty Agreement, RPI may require us to repurchase the revenue participation right. As collateral for these payments, we granted RPI a security interest in certain of our assets, including our intellectual property related to vosaroxin, as detailed above.

Economic conditions may make it costly and difficult to raise additional capital.

Recent volatility in the U.S. stock market and reduced credit availability may make investors unwilling to buy certain corporate stocks and bonds. If economic conditions affect the capital markets, our ability to raise capital, via our existing controlled equity facilities, debt facility or otherwise, may be adversely affected.

We are exposed to risks related to foreign currency exchange rates and European sovereign debt.

Some of our costs and expenses are denominated in foreign currencies. Most of our foreign expenses are associated with activities related to the VALOR trial that are occurring outside of the United States, and in particular in Western Europe. When the U.S. dollar weakens against the Euro or British pound, the U.S. dollar value of the foreign currency denominated expense increases, and when the U.S. dollar strengthens against the Euro or British pound, the U.S. dollar value of the foreign currency denominated expense decreases. Consequently, changes in exchange rates, and in particular a weakening of the U.S. dollar, may adversely affect our results of operations. We have and may continue to purchase certain European currencies or highly-rated investments denominated in such currencies to manage the risk of future movements in foreign exchange rates that would affect such payables, in accordance with our investment policy. However, there is no guarantee that the related gains and losses will substantially offset each other, and we may be subject to significant exchange gains or losses as currencies fluctuate from quarter to quarter.

In addition, the recent sovereign debt crisis concerning certain European countries and related European financial restructuring efforts may cause the value of European currencies, including the Euro, to deteriorate. Such deterioration could adversely impact our investments denominated in Euros, which had an aggregate fair value of $2.6 million as of December 31, 2013, all of which was invested in corporate debt securities. Rating agency downgrades on European sovereign debt and any potential default of European government issuers further contribute to this uncertainty. Should governments default on their obligations, we may experience loss of principal on any investments in European sovereign debt.

Our facilities are located near known earthquake fault zones, and the occurrence of an earthquake or other catastrophic disaster could cause damage to our facilities and equipment, which could require us to cease or curtail operations.

Our facilities are located in the San Francisco Bay Area near known earthquake fault zones and are vulnerable to significant damage from earthquakes. We are also vulnerable to damage from other types of disasters, including fires, floods, power loss, communications failures and similar events. If any disaster were to occur, our ability to operate our business at our facilities may be seriously or completely impaired and our data could be lost or destroyed.

Risks Related to Our Industry

The regulatory approval process is expensive, time consuming and uncertain and may prevent us from obtaining approval for the commercialization of vosaroxin.

The research, testing, manufacturing, selling and marketing of product candidates are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, which regulations differ from country to country. Neither we nor our present or potential future collaboration or licensing partners, if any, are permitted to market our product candidates in the United States until we receive approval of a new drug application, or NDA, from the FDA, or in any other country without the equivalent marketing approval from such country. We have not received marketing approval for vosaroxin in any jurisdiction. In addition, failure to comply with FDA and other applicable U.S. and foreign regulatory requirements may subject us to administrative or judicially imposed sanctions, including warning letters, civil and criminal penalties, injunctions, product seizure or detention, product recalls, total or partial suspension of production, and refusal to approve pending NDAs, supplements to approved NDAs or their foreign equivalents.

Regulatory approval of an NDA or NDA supplement or a foreign equivalent is not guaranteed, and the approval process is expensive, uncertain and may take several years. Furthermore, the development process for oncology products may take longer than in other therapeutic areas. Regulatory authorities have substantial discretion in the drug approval process. Despite the time and expense exerted, failure can occur at any stage, and we could encounter problems that cause us to abandon clinical trials or to repeat or perform additional preclinical studies and clinical trials. The number of preclinical studies and clinical trials that will be required for marketing approval varies depending on the drug candidate, the disease or condition that the drug candidate is designed to address, and the regulations applicable to any particular drug candidate. In particular, although we believe that our discussions with the FDA support the potential approval of vosaroxin for the treatment of AML based on positive results from the VALOR trial without the need to conduct additional clinical trials, the FDA has substantial discretion in the approval process and may not grant approval based on data from this trial.

The FDA or a foreign regulatory authority can delay, limit or deny approval of a drug candidate for many reasons, including:

- the drug candidate may not be deemed safe or effective;
- regulatory officials may not find the data from preclinical studies and clinical trials sufficient;
- the FDA or foreign regulatory authority might not approve our or our third-party manufacturers' processes or facilities; or
- the FDA or foreign regulatory authority may change its approval policies or adopt new regulations.

We may be subject to costly claims related to our clinical trials and may not be able to obtain adequate insurance.

Because we conduct clinical trials in humans, we face the risk that the use of vosaroxin or future product candidates, if any, will result in adverse side effects. We cannot predict the possible harms or side effects that may result from our clinical trials. Although we have clinical trial liability insurance for up to $10.0 million in the aggregate, our insurance may be insufficient to cover any such events. We do not know whether we will be able to continue to obtain clinical trial coverage on acceptable terms, or at all. We may not have sufficient resources to pay for any liabilities resulting from a claim excluded from, or beyond the limit of, our insurance coverage. There is also a risk that third parties that we have agreed to indemnify could incur liability. Any litigation arising from our clinical trials, even if we were ultimately successful, would consume substantial amounts of our financial and managerial resources and may create adverse publicity.

Even if we receive regulatory approval to sell vosaroxin, the market may not be receptive to vosaroxin.

Even if vosaroxin obtains regulatory approval, it may not gain market acceptance among physicians, patients, healthcare payors and/or the medical community. We believe that the degree of market acceptance will depend on a number of factors, including:

- timing of market introduction of competitive products;
- efficacy of our product;
- prevalence and severity of any side effects;
- potential advantages or disadvantages over alternative treatments;
- strength of marketing and distribution support;
- price of vosaroxin, both in absolute terms and relative to alternative treatments; and
- availability of reimbursement from health maintenance organizations and other third-party payors.

For example, the potential toxicity of single and repeated doses of vosaroxin has been explored in a number of animal studies that suggest the dose-limiting toxicities in humans receiving vosaroxin may be similar to some of those observed with approved cytotoxic agents, including reversible toxicity to bone marrow cells, the gastrointestinal system and other systems with rapidly dividing cells. In our Phase 1 and Phase 2 clinical trials of vosaroxin, we have witnessed the following side effects, irrespective of causality, ranging from mild to more severe: lowered white blood cell count that may lead to a serious or possibly life-threatening infection, hair loss, mouth sores, fatigue, nausea with or without vomiting, lowered platelet count, which may lead to an increase in bruising or bleeding, lowered red blood cell count (anemia), weakness, tiredness, shortness of breath, diarrhea and intestinal blockage.

If vosaroxin fails to achieve market acceptance, due to unacceptable side effects or any other reasons, we may not be able to generate significant revenue or to achieve or sustain profitability.

Even if we receive regulatory approval for vosaroxin, we will be subject to ongoing FDA and other regulatory obligations and continued regulatory review, which may result in significant additional expense and limit our ability to commercialize vosaroxin.

Any regulatory approvals that we or our potential future collaboration partners receive for vosaroxin or our future product candidates, if any, may also be subject to limitations on the indicated uses for which the product may be marketed or contain requirements for potentially costly post-marketing trials. In addition, even if approved, the labeling, packaging, adverse event reporting, storage, advertising, promotion and recordkeeping for any product will be subject to extensive and ongoing regulatory requirements. The subsequent discovery of previously unknown problems with a product, including adverse events of unanticipated severity or frequency, may result in restrictions on the marketing of the product, and could include withdrawal of the product from the market.

Regulatory policies may change and additional government regulations may be enacted that could prevent or delay regulatory approval of our product candidates. We cannot predict the likelihood, nature or extent of government regulation that may arise from future legislation or administrative action, either in the United States or abroad. If we are not able to maintain regulatory compliance, we might not be permitted to market vosaroxin or our future products and we may not achieve or sustain profitability.

The coverage and reimbursement status of newly approved drugs is uncertain, and failure to obtain adequate coverage and reimbursement could limit our ability to market vosaroxin and decrease our ability to generate revenue.

There is significant uncertainty related to the third party coverage and reimbursement of newly approved drugs both nationally and internationally. The commercial success of vosaroxin and our future products, if any, in both domestic and international markets depends on whether third-party coverage and reimbursement is available for the ordering of our future products by the medical profession for use by their patients. Medicare, Medicaid, health maintenance organizations and other third-party payors are increasingly attempting to manage healthcare costs by limiting both coverage and the level of reimbursement of new drugs and, as a result, they may not cover or provide adequate payment for our future products. These payors may not view our future products as cost-effective, and reimbursement may not be available to consumers or may not be sufficient to allow our future products to be marketed on a competitive basis. Likewise, legislative or regulatory efforts to control or reduce healthcare costs or reform government healthcare programs could result in lower prices or rejection of our future products. Changes in coverage and reimbursement policies or healthcare cost containment initiatives that limit or restrict reimbursement for our future products may reduce any future product revenue.

Failure to obtain regulatory approval in foreign jurisdictions will prevent us from marketing vosaroxin abroad.

We intend to market vosaroxin in international markets either directly or through a potential future collaboration partner, if any. In order to market vosaroxin in the European Union, Canada and many other foreign jurisdictions, we or a potential future collaboration partner must obtain separate regulatory approvals. We have, and potential future collaboration partners may have, had limited interactions with foreign regulatory authorities, and the approval procedures vary among countries and can involve additional testing at significant cost. The time required to obtain approval may differ from that required to obtain FDA approval. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other foreign countries or by the FDA. The foreign regulatory approval processes may include all of the risks associated with obtaining FDA approval. We or a potential future collaboration partner may not obtain foreign regulatory approvals on a timely basis, if at all. We or a potential future collaboration partner may not be able to file for regulatory approvals and may not receive necessary approvals to commercialize vosaroxin or any other future products in any market.

Foreign governments often impose strict price controls, which may adversely affect our future profitability.

We intend to seek approval to market vosaroxin in both the United States and foreign jurisdictions either directly or through one or more potential future collaboration partners. If we or a potential future collaboration partner obtain approval in one or more foreign jurisdictions, we or the potential future collaboration partner will be subject to rules and regulations in those jurisdictions relating to vosaroxin. In some foreign countries, particularly in the European Union, prescription drug pricing is subject to governmental control. In these countries, pricing negotiations with governmental authorities can take considerable time after the receipt of marketing approval for a drug candidate. To obtain reimbursement or pricing approval in some countries, we or a potential future collaboration partner may be required to conduct a clinical trial that compares the cost-effectiveness of vosaroxin to other available therapies. If reimbursement of vosaroxin is unavailable or limited in scope or amount, or if pricing is set at unsatisfactory levels, we may be unable to achieve or sustain profitability.

We may incur significant costs complying with environmental laws and regulations, and failure to comply with these laws and regulations could expose us to significant liabilities.

We, through third-party contractors, use hazardous chemicals and radioactive and biological materials in our business and are subject to a variety of federal, state, regional and local laws and regulations governing the

use, generation, manufacture, storage, handling and disposal of these materials. Although we believe our safety procedures for handling and disposing of these materials and waste products comply with these laws and regulations, we cannot eliminate the risk of accidental injury or contamination from the use, storage, handling or disposal of hazardous materials. In the event of contamination or injury, we could be held liable for any resulting damages, and any liability could significantly exceed our insurance coverage, which is limited for pollution cleanup and contamination.

Risks Related to Our Common Stock

The price of our common stock may continue to be volatile, and the value of an investment in our common stock may decline.

In 2013, our common stock traded as low as $3.92 and as high as $6.54. Factors that could cause continued volatility in the market price of our common stock include, but are not limited to:

- our ability to raise additional capital to carry through with our clinical development plans and current and future operations and the terms of any related financing arrangement;
- results from, and any delays in or discontinuance of, ongoing and planned clinical trials for vosaroxin, including investigator-sponsored trials and including publication of the LI-1 trial results;
- announcements of FDA non-approval of vosaroxin, delays in filing regulatory documents with the FDA or other regulatory agencies, or delays in the review process by the FDA or other foreign regulatory agencies;
- announcements relating to restructuring and other operational changes;
- delays in the commercialization of vosaroxin or our future products, if any;
- market conditions in the pharmaceutical, biopharmaceutical and biotechnology sectors;
- issuance of new or changed securities analysts' reports or recommendations;
- developments or disputes concerning our intellectual property or other proprietary rights;
- clinical and regulatory developments with respect to potential competitive products;
- failure to maintain compliance with the covenants in the Loan Agreement;
- introduction of new products by our competitors;
- issues in manufacturing vosaroxin drug substance or drug product, or future products, if any;
- market acceptance of vosaroxin or our future products, if any;
- announcements relating to our arrangements with Biogen Idec, Millennium or RPI;
- actual and anticipated fluctuations in our quarterly operating results;
- deviations in our operating results from the estimates of analysts;
- third-party healthcare reimbursement policies;

- FDA or other U.S. or foreign regulatory actions affecting us or our industry;
- litigation or public concern about the safety of vosaroxin or future products, if any;
- failure to develop or sustain an active and liquid trading market for our common stock;
- sales of our common stock by our officers, directors or significant stockholders; and
- additions or departures of key personnel.

Provisions of our charter documents or Delaware law could delay or prevent an acquisition of our company, even if the acquisition would be beneficial to our stockholders, and could make it more difficult to change management.

Provisions of our amended and restated certificate of incorporation and amended and restated bylaws may discourage, delay or prevent a merger, acquisition or other change in control that stockholders might otherwise consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. In addition, these provisions may frustrate or prevent any attempt by our stockholders to replace or remove our current management by making it more difficult to replace or remove our board of directors. These provisions include:

- a classified board of directors so that not all directors are elected at one time;
- a prohibition on stockholder action through written consent;
- limitations on our stockholders' ability to call special meetings of stockholders;
- an advance notice requirement for stockholder proposals and nominations; and
- the authority of our board of directors to issue preferred stock with such terms as our board of directors may determine.

In addition, Delaware law prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person who, together with its affiliates, owns or within the last three years has owned 15% of our voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. Accordingly, Delaware law may discourage, delay or prevent a change in control of our company.

Provisions in our charter documents and provisions of Delaware law could limit the price that investors are willing to pay in the future for shares of our common stock.

We have never paid dividends on our capital stock and we do not anticipate paying any cash dividends in the foreseeable future.

We have never declared or paid cash dividends on our capital stock. We do not anticipate paying any cash dividends on our capital stock in the foreseeable future. In addition, under the terms of our Loan Agreement with the Lenders, we are precluded from paying cash dividends without the prior written consent of the Lenders. We currently intend to retain all available funds and any future earnings to fund the development and growth of our business. As a result, capital appreciation, if any, of our common stock will be our stockholders' sole source of gain for the foreseeable future.

We are at risk of securities class action litigation.

In the past, securities class action litigation has often been brought against a company following a decline in the market price of its securities. This risk is especially relevant for us because biotechnology companies have experienced greater than average stock price volatility in recent years. These broad market fluctuations may adversely affect the trading price or liquidity of our common stock. In the past, when the market price of a stock has been volatile, holders of that stock have sometimes instituted securities class action litigation against the issuer. If any of our stockholders were to bring such a lawsuit against us, we could incur substantial costs defending the lawsuit and the attention of our management would be diverted from the operation of our business.

The ownership of our capital stock is concentrated, and your interests may conflict with the interests of our existing stockholders.

Our executive officers and directors together with their affiliates beneficially owned approximately 26.2% of our outstanding capital stock as of December 31, 2013, assuming the exercise in full of the outstanding warrants to purchase common stock held by these stockholders as of such date. Accordingly, these stockholders, acting as a group, could have an influence over the outcome of corporate actions requiring stockholder approval, including the election of directors, any merger, consolidation or sale of all or substantially all of our assets or any other significant corporate transaction. The significant concentration of stock ownership may adversely affect the trading price of our common stock due to investors' perception that conflicts of interest may exist or arise.

ITEM 1B. *UNRESOLVED STAFF COMMENTS*

None.

ITEM 2. *PROPERTIES*

In December 2006, we subleased 15,378 square feet of office space in a building at 395 Oyster Point Boulevard in South San Francisco, California, which is currently our corporate headquarters. The sublease, as amended in January 2014, expired on February 28, 2014. Also, in January 2014, we executed a new lease agreement for the same facility, which expires on April 30, 2015. Following a potential positive outcome from our VALOR trial, we are likely to need additional space.

ITEM 3. *LEGAL PROCEEDINGS*

From time to time, we may be involved in routine legal proceedings, as well as demands, claims and threatened litigation, which arise in the normal course of our business. The ultimate outcome of any litigation is uncertain and unfavorable outcomes could have a negative impact on our results of operations and financial condition. Regardless of outcome, litigation can have an adverse impact on us because of the defense costs, diversion of management resources and other factors.

We believe there is no litigation pending that could, individually or in the aggregate, have a material adverse effect on our results of operations or financial condition.

ITEM 4. *MINE SAFETY DISCLOSURES*

Not applicable.

PART II

ITEM 5. *MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES*

Our common stock is listed on The NASDAQ Stock Market under the symbol "SNSS." The following table sets forth the range of the high and low sales prices by quarter, as reported by NASDAQ.

Year-Ended December 31, 2012	High	Low
First Quarter	$3.17	$1.17
Second Quarter	$3.19	$2.45
Third Quarter	$5.98	$2.30
Fourth Quarter	$6.85	$3.60

Year-Ended December 31, 2013	High	Low
First Quarter	$6.54	$3.92
Second Quarter	$6.00	$4.71
Third Quarter	$6.13	$4.52
Fourth Quarter	$5.38	$4.53

As of February 28, 2014, there were approximately 153 holders of record of our common stock. In addition, we believe that a significant number of beneficial owners of our common stock hold their shares in nominee or in "street name" accounts through brokers. On February 28, 2014, the last sale price reported on The NASDAQ Stock Market for our common stock was $6.55 per share.

Dividend Policy

We have never paid cash dividends on our common stock. We do not anticipate paying any cash dividends on our capital stock in the foreseeable future. While subject to periodic review, the current policy of our board of directors is to retain cash and investments primarily to provide funds for our future growth. In addition, under the terms of our loan and security agreement with Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation, we are precluded from paying cash dividends without the prior written consent of the lenders.

Recent Sales of Unregistered Securities

None.

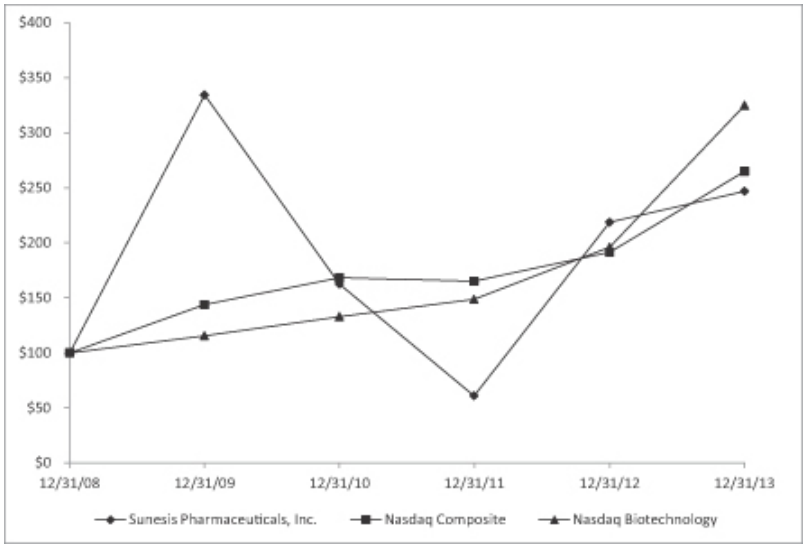
Stock Performance Graph

The following stock performance graph compares the cumulative total return to security holders of our common shares with the comparable cumulative returns of the NASDAQ Composite Index and the NASDAQ Biotechnology Index. The graph assumes the investment of $100 on December 31, 2008 and the reinvestment of all dividends, if any. Points on the graph represent the performance as of the last business day of each of the fiscal years indicated.

The following performance graph is not "soliciting material," is not deemed filed with the SEC and is not to be incorporated by reference in any filing by us under the Securities Act of 1933, as amended, or the Securities Act, or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing. The stock price performance shown on the graph is not necessarily indicative of future price performance.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN*

Among Sunesis Pharmaceuticals, Inc., the NASDAQ Composite Index, and the NASDAQ Biotechnology Index



* $100 invested on December 31, 2008 in stock or index, including reinvestment of any dividends.

ITEM 6. *SELECTED FINANCIAL DATA*

The following selected financial data should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and notes to those statements included elsewhere in this report. The historical results presented below are not necessarily indicative of future results.

Consolidated Statement of Operations:	Year Ended December 31,				
	2013	2012	2011	2010	2009
	(In thousands, except per share amounts)				
Revenue:					
Collaboration revenue	$ —	$ —	$ —	$ 27	$ 1,550
License and other revenue	7,956	3,754	5,000	6	2,212
Total revenues	7,956	3,754	5,000	33	3,762
Operating expenses:					
Research and development	28,891	29,185	22,563	14,433	13,247
General and administrative	10,838	9,175	8,303	7,005	7,748
Restructuring charges	—	—	—	—	1,916
Total operating expenses	39,729	38,360	30,866	21,438	22,911
Loss from operations	(31,773)	(34,606)	(25,866)	(21,405)	(19,149)
Interest expense	(2,917)	(1,855)	(259)	—	—
Other income (expense), net(1)	92	(7,490)	5,984	(3,182)	(21,077)
Net loss	(34,598)	(43,951)	(20,141)	(24,587)	(40,226)
Deemed distribution to preferred stockholders(2)	—	—	—	—	(27,563)
Loss attributable to common stockholders	$(34,598)	$(43,951)	$(20,141)	$(24,587)	$(67,789)
Shares used in computing basic and diluted loss attributable to common stockholders per common share	52,249	48,146	46,412	24,860	5,747
Basic and diluted loss attributable to common stockholders per common share	$ (0.66)	$ (0.91)	$ (0.43)	$ (0.99)	$ (11.80)

(1) During 2013, 2012, 2011 and 2010, we recorded net non-cash credits (charges) of $0.1 million, $(7.5) million, $5.9 million and $(3.7) million, respectively, related to the revaluation of the liability for warrants issued in connection with the underwritten public offering of our common stock in October 2010 (see Note 10 of the accompanying consolidated financial statements).

During 2009, we recorded non-cash charges of $21.0 million related to the accounting for the fair values of securities issued as part of a tranched private placement transaction. The non-cash charges consisted of $7.5 million recorded upon the initial closing of $10.0 million of securities in April 2009 and $13.5 million upon the revaluation in June 2009 of the options to participate in the second closing of $5.0 million of securities and the third closing of up to $28.5 million of common stock, which occurred in October 2009 and June 2010, respectively.

(2) During 2009, we recorded deemed distributions to preferred stockholders totaling $27.6 million, related to the accounting for the private placement. Of this amount, $26.4 million was due to the revaluation of certain securities upon an amendment of the private placement agreements in June 2009, and $1.2 million was due to the write-off of a discount for a beneficial conversion feature on the convertible preferred stock issued as part of the second closing in October 2009.

Consolidated Balance Sheet Data:	As of December 31,				
	2013	2012	2011	2010	2009
	(In thousands)				
Cash, cash equivalents and marketable securities	$ 39,293	$ 71,227	$ 44,115	$ 53,396	$ 4,259
Working capital	6,520	41,191	37,282	42,118	1,807
Total assets	40,525	73,017	45,869	54,858	5,169
Non-current portion of deferred revenue	3,712	11,668	—	—	—
Current portion of notes payable	9,018	6,610	—	—	—
Non-current portion of notes payable	9,025	17,651	9,453	—	—
Convertible preferred stock	—	—	—	—	60,005
Common stock and additional paid-in capital	473,514	457,016	429,147	423,267	298,473
Accumulated deficit	(479,695)	(445,097)	(401,146)	(381,005)	(356,418)
Total stockholders' (deficit) equity	(6,184)	11,957	28,020	42,247	2,060

ITEM 7. *MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS*

The following discussion and analysis of our financial condition as of December 31, 2013 and results of operations for the year ended December 31, 2013 should be read together with our consolidated financial statements and related notes included elsewhere in this report.

This discussion and analysis contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and the Private Securities Litigation Reform Act of 1995, which involve risks, uncertainties and assumptions. All statements, other than statements of historical facts, are "forward-looking statements" for purposes of these provisions, including without limitation any statements relating to our strategy, including our plans with respect to unblinding the VALOR trial, presenting clinical data and initiating clinical trials, our future research and development activities, including clinical testing and the costs and timing thereof, sufficiency of our cash resources, our ability to raise additional funding when needed, any statements concerning anticipated regulatory activities or licensing or collaborative arrangements, our research and development and other expenses, our operations and legal risks, and any statement of assumptions underlying any of the foregoing. In some cases, forward-looking statements can be identified by the use of terminology such as "anticipates," "believe," "continue," "estimates," "expects," "intend," "look forward," "may," "could," "seeks," "plans," "potential," or "will" or the negative thereof or other comparable terminology. Although we believe that the expectations reflected in the forward-looking statements contained herein are reasonable, there can be no assurance that such expectations or any of the forward-looking statements will prove to be correct, and actual results could differ materially from those projected or assumed in the forward-looking statements. Our actual results may differ materially from those anticipated in these forward-looking statements as a result of many factors, including but not limited to those set forth under "Risk Factors," and elsewhere in this report. We urge you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All forward-looking statements included in this report are based on information available to us on the date of this report, and we assume no obligation to update any forward-looking statements contained in this report.

Overview

We are a biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of solid and hematologic cancers. Our efforts are currently focused primarily on the development of vosaroxin for the treatment of acute myeloid leukemia, or AML. In December 2010, we commenced enrollment of a Phase 3, multi-national, randomized, double-blind, placebo-controlled, pivotal trial of vosaroxin in combination with cytarabine in patients with relapsed or refractory AML, or the VALOR trial. The VALOR trial is designed to evaluate the effect of vosaroxin in combination with cytarabine, a widely used chemotherapy in AML, on overall survival as compared to placebo in combination with cytarabine, and is being conducted at more than 100 study sites in the U.S., Canada, Europe, South Korea, Australia and New Zealand.

In September 2012, following the recommendation of the trial's independent Data and Safety Monitoring Board, or DSMB, after the DSMB's completion of a single, pre-planned interim analysis of unblinded efficacy and safety data sets from the VALOR trial, we implemented a one-time, 225 patient sample size increase to the VALOR trial, bringing target enrollment to 675 patients. This pre-specified sample size increase is designed to maintain adequate statistical power over a broader range of survival outcomes. In September 2013, we completed enrollment of 712 patients in the VALOR trial, which included a 5% over-enrollment factor. We anticipate unblinding of the VALOR trial in the third quarter of 2014, after reaching 562 events in the VALOR trial and locking the final database.

We are also preparing the final clinical study reports and manuscripts for two completed clinical trials of vosaroxin: a Phase 1b/2 trial of vosaroxin in combination with cytarabine for the treatment of patients with

relapsed or refractory AML, and a Phase 2 trial in previously untreated patients age 60 years or older with AML, or REVEAL-1, which explored three dosing schedules of vosaroxin.

In the second half of 2013, we announced the initiation of three Phase 1/2 investigator-sponsored trials of vosaroxin, either as a standalone therapy or in combination with approved compounds, in various indications of AML and high-risk myelodysplastic syndrome, or MDS. The trials are being conducted at the University of Texas MD Anderson Cancer Center, Weill Cornell Medical College and New York-Presbyterian Hospital, and the Washington University School of Medicine.

In January 2014, we announced the expansion of our oncology franchise through separate global licensing agreements for two preclinical kinase inhibitor programs. The first agreement, with Biogen Idec, is for global commercial rights to SNS-062, a potent and selective non-covalently binding oral inhibitor of BTK. We anticipate filing an investigational new drug, or IND, application for SNS-062 with the FDA in 2015 to begin human clinical trials.

The second agreement, with Millennium, is for global commercial rights to several potential first-in class, pre-clinical inhibitors of the novel target PDK1. We anticipate selecting a lead PDK1 development candidate to take into IND-enabling studies by the end of 2014.

Both BTK and PDK1 programs were originally developed under a research collaboration agreement between Biogen Idec and Sunesis. The PDK1 program was subsequently purchased by and exclusively licensed to Millennium in 2011 along with the more advanced program, MLN2480, a pan-RAF inhibitor currently in the maximum tolerated dose cohort expansion stage of a Millennium Phase 1, multicenter dose escalation study. We currently expect SNS-062 and the PDK1 inhibitors will be developed exclusively by Sunesis.

Recent Financial History

Royalty Agreement

In March 2012, we entered into the Royalty Agreement with RPI, an entity related to Royalty Pharma. In September 2012, as a result of the recommendation by the DSMB to increase the sample size for the VALOR trial, RPI made a $25.0 million cash payment to us in exchange for a 6.75% royalty on any future net sales of vosaroxin and warrants to purchase shares of our common stock.

Loan Agreement

In October 2011, we entered into the Loan Agreement with the Lenders, and received the first tranche of $10.0 million from the Lenders. In September 2012, following the recommendation by the DSMB to increase the sample size for the VALOR trial, we drew the second tranche of $15.0 million from the Lenders. Payments under both tranches were interest-only until February 1, 2013, with the following 32 equal monthly payments of principal and interest being paid monthly in arrears through the scheduled maturity date of October 1, 2015.

Equity Financing Agreements

In August 2011, we entered into a Controlled Equity Offering℠ sales agreement, or the Sales Agreement, with Cantor Fitzgerald & Co., or Cantor, as agent and/or principal, pursuant to which we could issue and sell shares of our common stock having an aggregate gross sales price of up to $20.0 million. In April 2013, the Sales Agreement was amended to provide for an increase of $30.0 million in the aggregate gross sales price under the Sales Agreement. We will pay Cantor a commission of 3.0% of the gross proceeds from any common stock sold through the Sales Agreement, as amended.

During 2013, we sold an aggregate of 2,534,991 shares of common stock under the Sales Agreement, as amended, at an average price of approximately $4.87 per share for gross proceeds of $12.4 million and net proceeds of $12.0 million, after deducting Cantor’s commission. As of December 31, 2013, $21.5 million of common stock remained available to be sold under this facility.

Capital Requirements

We have incurred significant losses in each year since our inception. As of December 31, 2013, we had cash, cash equivalents and marketable securities of $39.3 million and an accumulated deficit of $479.7 million. We expect to continue to incur significant losses for the foreseeable future as we continue the development process and seek regulatory approvals for vosaroxin.

We will need to raise substantial additional capital to complete the development and potential commercialization of vosaroxin, and expect to finance our future cash needs primarily through warrant exercises, equity issuances, debt arrangements, one or more possible licenses, collaborations or other similar arrangements with respect to development and/or commercialization rights to vosaroxin, or a combination of the above. However, we do not know whether additional funding will be available on acceptable terms, or at all. If we are unable to raise required funding on acceptable terms or at all, we will need to reduce operating expenses, enter into a collaboration or other similar arrangement with respect to development and/or commercialization rights to vosaroxin, outlicense intellectual property rights to vosaroxin or our other development programs, sell unsecured assets, or a combination of the above, or be forced to delay or reduce the scope of our vosaroxin development program, potentially including any regulatory filings related to the VALOR trial, and/or limit or cease our operations.

Critical Accounting Policies and the Use of Estimates

The accompanying discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements and the related disclosures, which have been prepared in accordance with U.S. generally accepted accounting principles. The preparation of these consolidated financial statements requires our management to make estimates, assumptions and judgments that affect the amounts reported in our financial statements and accompanying notes, including reported amounts of assets, liabilities and expenses and the disclosure of contingent assets and liabilities at the date of the consolidated financial statements, as well as revenue and expenses during the reporting periods. We evaluate our estimates, assumptions and judgments on an ongoing basis. We base our estimates on historical experience and on various other assumptions we believe are reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Management has discussed the development, selection and disclosure of these estimates with the Audit Committee of our Board of Directors. Actual results could differ materially from these estimates under different assumptions or conditions.

Our significant accounting policies are more fully described in Note 2 to our consolidated financial statements included elsewhere in this report. We believe the following critical accounting policies reflect our more significant estimates and assumptions used in the preparation of our consolidated financial statements.

Accounting for Equity Financing

In October 2010, we completed an underwritten offering, or the 2010 Offering, in which we sold our common stock and warrants to purchase our common stock for aggregate gross proceeds of $15.5 million. Due to the potential for the warrants to be settled in cash upon the occurrence of certain transactions specified in the warrant agreements, the warrants are being accounted for as a derivative liability as opposed to permanent equity. Outstanding warrants under this arrangement are revalued to their fair value at each period end, with the change in fair value recorded to other income (expense) in the statements of operations and comprehensive (loss) income. The Black-Scholes model was selected as the most appropriate method to estimate both the initial and subsequent fair values of the warrants. The determination of initial and subsequent fair values is affected by our stock price as well as assumptions regarding a number of highly complex and subjective variables. Changes in these input variables have, and will continue to, affect the income or expense recorded each period for the revaluation of outstanding warrants. As a result, fluctuations in our stock price or other input variables may significantly affect our financial results.

Accounting for Royalty Agreement

In March 2012, we entered into the Royalty Agreement with RPI, and in September 2012, as a result of the recommendation by the DSMB to increase the sample size for the VALOR trial, RPI made a $25.0 million cash payment to us in exchange for a 6.75% royalty on any future net sales of vosaroxin. In conjunction with the Royalty Agreement, we issued two five-year warrants to RPI, each to purchase 1,000,000 shares of our common stock.

The payment of $25.0 million by RPI is non-refundable, and no revenue participation right payments will be made unless vosaroxin successfully completes the VALOR trial and is subsequently commercialized. Accordingly, the payment, less a portion representing the fair value of the warrants of $3.1 million, is being accounted for as consideration for our commitment to use commercially reasonable efforts to complete the VALOR trial and commercialize vosaroxin. The net amount of $21.9 million has therefore been classified as deferred revenue and is being amortized to revenue over the related estimated performance period, and the fair value of the warrants has been recorded to additional paid-in capital. The Black-Scholes model was selected as the most appropriate method to estimate the fair value of the warrants. The Black-Scholes model requires several subjective inputs such as expected term and share price volatility, which require significant analysis and judgment to develop.

Revenue Recognition

Revenue arrangements with multiple deliverables are accounted for in accordance with Financial Accounting Standards Board Accounting Standards Codification Subtopic 605-25, *Multiple-Element Arrangements*, or ASC 605-25. Under ASC 605-25, revenue arrangements with multiple deliverables are divided into separate units of accounting based on whether certain criteria are met, including whether the delivered item has stand-alone value to the customer. Consideration is allocated among the separate units of accounting based on their respective fair value, and the applicable revenue recognition is applied to each of the separate units.

Non-refundable fees where we have no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where continuing performance obligations exist, non-refundable fees are deferred and recognized ratably over the projected performance period.

Milestone payments from license or collaboration agreements which are substantive and at risk at the time the agreement is executed are recognized upon completion of the applicable milestone event. Royalty revenues, if any, will be recognized based on reported product sales by third-party licensees. Research funding from any future agreement will be recognized as the related research services are performed.

Clinical Trial Accounting

We record accruals for estimated clinical trial costs, which include payments for work performed by contract research organizations, or CROs, and participating clinical trial sites. These costs are generally a significant component of research and development expense. Costs incurred for setting up clinical trial sites for participation in trials are generally non-refundable, and are expensed as incurred, with any refundable advances related to enrollment of the first patient recorded as prepayments and assessed for recoverability on a quarterly basis. Costs related to patient enrollment are accrued as patients progress through the clinical trial, including amortization of any first-patient prepayments. This amortization generally matches when the related services are rendered, however, these cost estimates may or may not match the actual costs incurred by the CROs or clinical trial sites, and if we have incomplete or inaccurate information, our clinical trial accruals may not be accurate. The difference between accrued expenses based on our estimates and actual expenses have not been significant to date.

Stock-Based Compensation

We grant options to purchase common stock to our employees, directors and consultants under our equity incentive plans. Under our employee stock purchase plan, eligible employees can also purchase shares of our common stock at 85% of the lower of the fair market value of our common stock at the beginning of a 12-month offering period or at the end of one of the two related six-month purchase periods.

We value these share-based awards using the Black-Scholes option valuation model, or the Black-Scholes Model. The determination of fair value of share-based payment awards on the date of grant using the Black-Scholes Model is affected by our stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the expected stock price volatility over the term of the awards and actual and projected employee stock option exercise behaviors and related estimated forfeitures, which require significant analysis and judgment to develop.

Overview of Revenues

We have not generated any revenue from the sale of commercial products, and do not anticipate product sales until 2015, if at all. Over the past three years, we have generated revenue primarily through license and collaboration agreements with Biogen Idec and Millennium, and the Royalty Agreement with RPI. We cannot predict whether we will receive any additional event-based payments or royalties from these agreements, as amended, in the foreseeable future, or at all.

Overview of Operating Expenses

Research and development expense. Most of our operating expenses to date have been for research and development activities, and include costs incurred:

- in the preparation and execution of clinical trials, including those for vosaroxin;
- in the discovery and development of novel small molecule therapeutics;
- in the development and use of in-house research, preclinical study and development capabilities;
- in connection with in-licensing activities; and
- in the conduct of activities related to strategic collaborations.

We are currently focused on the development of vosaroxin for the treatment of AML. Based on results of translational research, our own and investigator-sponsored trials, regulatory and competitive concerns and our overall financial resources, we anticipate that we will make determinations as to which indications to pursue and patient populations to treat in the future, and how much funding to direct to each indication, which will affect our research and development expense. If we proceed to commercialization following the unblinding of the VALOR trial, we anticipate research and development costs to increase in the future, including additional costs related to obtaining regulatory approval.

We are no longer conducting any research activities in connection with existing collaboration agreements, however, we will incur development expenses in 2014 associated with advancing the recently in-licensed SNS-062 and PDK1 inhibitor programs. Additionally, under the Millennium Agreement, we have the right to participate in co-development and co-promotion activities for the related product candidates, including MLN2480, a pan-RAF inhibitor currently in the maximum tolerated dose cohort expansion stage of a Millennium Phase 1, multicenter dose escalation study. If we were to exercise our option on this or other product candidates, our research and development expense would increase significantly.

If we engage a development or commercialization partner for our vosaroxin program, or if, in the future, we acquire additional product candidates, our research and development expenses could be significantly affected. We cannot predict whether future licensing or collaborative arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and capital requirements.

As of December 31, 2013, we had incurred $158.7 million of expenses in the development of vosaroxin since it was licensed from Dainippon Sumitomo Pharma Co., Ltd., or Dainippon, in October 2003. We expect to continue to incur significant expenses related to the development of vosaroxin in 2014 and future years. Due to the above uncertainties and other risks inherent in the development process, we are unable to estimate the costs we will incur in the vosaroxin development program in the future.

General and administrative expense. General and administrative expense consists primarily of personnel costs for the related employees, including non-cash stock-based compensation; professional service costs, including fees paid to outside legal advisors, marketing consultants and our independent registered public accounting firm; facilities expenses; and other administrative costs. If we proceed to commercialization following the unblinding of the VALOR trial, we anticipate general and administrative expenses to increase in the future, including additional costs related to selling and marketing.

Results of Operations

Years Ended December 31, 2013 and 2012

Revenue. Total revenue was $8.0 million in 2013 as compared to $3.8 million in 2012. Revenue in 2013 was due to deferred revenue recognized related to the Royalty Agreement with RPI. Revenue in 2012 was comprised of $1.5 million received from Biogen Idec in June 2012 for the advancement of pre-clinical work under the Biogen Idec 1st ARCA and $2.3 million of deferred revenue recognized in 2012 related to the Royalty Agreement with RPI. We expect our revenue to be at least equal in 2014 as compared to 2013, assuming continued recognition of deferred revenue related to the Royalty Agreement with RPI.

Research and development expense. Research and development expense was $28.9 million in 2013 as compared to $29.2 million in 2012, substantially all relating to the vosaroxin development program in each year. The decrease of $0.3 million in 2013 was primarily due to decreases of $1.1 million in drug manufacturing costs and $1.3 million in other outside services and consulting costs, partially offset by increases of $1.2 million in personnel costs and $0.9 million in clinical trial expenses.

General and administrative expense. General and administrative expense was $10.8 million in 2013 as compared to $9.2 million in 2012. The increase of $1.6 million in 2013 was primarily due to increases of $1.0 million in professional services costs and $0.7 million in personnel costs.

Interest expense. Interest expense was $2.9 million in 2013 as compared to $1.9 million in 2012. The increase in 2013 was due to the additional interest expense related to the draw-down of the $15.0 million second tranche from the Lenders under the Loan Agreement in September 2012.

Other income (expense), net. Net other income was $0.1 million in 2013 as compared to net other expense of $7.5 million in 2012. The amounts for each period were primarily comprised of non-cash charges or credits for the revaluation of warrants issued in the 2010 Offering.

Years Ended December 31, 2012 and 2011

Revenue. Total revenue was $3.8 million in 2012 as compared to $5.0 million in 2011. As noted above, revenue in 2012 was comprised of $1.5 million received from Biogen Idec and $2.3 million of deferred revenue recognized related to the Royalty Agreement with RPI. Revenue in 2011 was comprised of an upfront payment

of $4.0 million that we received from Millennium in relation to the termination and transition agreement that we entered into with Biogen Idec and Millennium in March 2011, and $1.0 million that we received as a result of the repayment by SARcode of three promissory notes that had been issued to us upon entering into a license agreement with them in March 2006.

Research and development expense. Research and development expense was $29.2 million in 2012 as compared to $22.6 million in 2011, substantially all relating to the vosaroxin development program in each year. The increase of $6.6 million in 2012 was primarily due to increases of $3.5 million in clinical trial expenses, $2.5 million in outside services and consulting costs, and $0.7 million in personnel costs.

General and administrative expense. General and administrative expense was $9.2 million in 2012 as compared to $8.3 million in 2011. The increase of $0.9 million in 2012 was primarily due to higher non-cash stock-based compensation expense and other personnel-related costs.

Interest expense. Interest expense was $1.9 million in 2012 as compared to $0.3 million in 2011. The increase in 2012 was due to the timing of the first and second tranche draw-downs from the Lenders under the Loan Agreement.

Other income (expense), net. Net other expense was $7.5 million in 2012 as compared to net other income of $6.0 million in 2011. The amounts for each period were primarily comprised of non-cash charges or credits for the revaluation of warrants issued in the 2010 Offering.

Income Taxes

Deferred tax assets or liabilities may arise from differences between the tax basis of assets or liabilities and their basis for financial reporting. Deferred tax assets or liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which temporary differences are expected to be recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. Our policy is to recognize interest charges and penalties as other expense.

Since inception, we have incurred operating losses and, accordingly, have not recorded a provision for income taxes for any of the periods presented. As of December 31, 2013, we had net operating loss carry-forwards for federal and state income tax purposes of $326.2 million and $209.5 million, respectively. We also had federal and state research and development tax credit carry-forwards of $7.5 million and $6.8 million, respectively. If not utilized, the federal net operating loss and tax credit carry-forwards will expire at various dates beginning in 2018 and the state net operating loss will begin to expire in 2014. The state research and development tax credit carry-forwards do not expire. Utilization of these net operating loss and tax credits carry-forwards may be subject to a substantial annual limitation due to ownership change rules under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code. The limitations are applicable if an “ownership change,” as defined in the Code, is deemed to have occurred or occurs in the future. The annual limitation may result in the expiration of net operating loss and credit carry-forwards before they can be utilized.

Liquidity and Capital Resources

Sources of Liquidity

Since our inception, we have funded our operations primarily through the issuance of common and preferred stock and other equity instruments, debt financings, the receipt of funds from our collaboration partners, the sale of revenue participation rights, and research grants.

Our cash, cash equivalents and marketable securities totaled $39.3 million as of December 31, 2013, as compared to $71.2 million as of December 31, 2012. The decrease of $31.9 million was primarily due to $37.4 million of net cash used in operating activities and $7.2 million of principal payments against notes payable,

partially offset by net proceeds of $12.0 million from sales of our common stock through the Sales Agreement with Cantor and $0.6 million from the exercise of warrants, stock options and stock purchase rights.

During 2013, we sold an aggregate of 2,534,991 shares of common stock under the Sales Agreement, as amended, at an average price of approximately $4.87 per share for gross proceeds of $12.4 million and net proceeds of $12.0 million, after deducting Cantor's commission. As of December 31, 2013, $21.5 million of common stock remained available to be sold under this facility, subject to certain conditions as specified in the agreement.

On March 4, 2014, we completed a $43.0 million underwritten offering of 4,650,000 shares of common stock and accompanying warrants at $9.25 per share of common stock, together with two warrants to each purchase one share of our common stock, at exercise prices of $8.50 and $12.00 per share, respectively. Gross proceeds from the sale were $43.0 million and net proceeds were approximately $40.0 million, after deducting the underwriting discount and estimated offering expenses. The warrants are exercisable only after unblinding of the VALOR trial, with the first warrant to expire on or before the later of nine months after issuance and 30 days following unblinding of the VALOR trial, but no later than 24 months after issuance, and the second warrant to expire on or before the later of 18 months after issuance and 30 days following the PDUFA date of the VALOR trial, but in no event later than 24 months after issuance.

Cash Flows

Net cash used in operating activities was $37.4 million in 2013 as compared to $10.6 million in 2012 and $22.8 million in 2011. Net cash used in 2013 resulted primarily from the net loss of $34.6 million and changes in operating assets and liabilities of $7.1 million (including $8.0 million related to recognition of deferred revenue under the Royalty Agreement), partially offset by net adjustments for non-cash items of $4.3 million (including expenses of $3.9 million for stock-based compensation). Net cash used in 2012 resulted primarily from the net loss of $44.0 million, partially offset by net adjustments for non-cash items of $10.6 million (including net charges of $7.5 million for the revaluation of warrants issued in the 2010 Offering and $2.7 million of stock-based compensation), and changes in operating assets and liabilities of $22.7 million (including a net increase in deferred revenue of $19.6 million related to the receipt of the $25.0 million payment from RPI, and an increase of $3.1 million in accrued clinical expenses related to the VALOR trial). Net cash used in 2011 resulted primarily from the net loss of $20.1 million and net adjustments for non-cash items of $4.2 million (including a net credit of $5.9 million for the revaluation of warrants issued in the 2010 Offering, partially offset by $1.4 million of stock-based compensation), partially offset by changes in operating assets and liabilities of $1.5 million, primarily as a result of an increase in accrued clinical expenses related to the VALOR trial.

Net cash provided by investing activities was $32.2 million in 2013 as compared to $21.4 million used in investing activities in 2012 and $4.2 million provided by investing activities in 2011. Net cash provided in 2013 and 2011 consisted primarily of proceeds from maturities of marketable securities, partially offset by purchases of marketable securities. Net cash used in 2012 consisted primarily of purchases of marketable securities, partially offset by proceeds from maturities of marketable securities.

Net cash provided by financing activities was $5.4 million in 2013 as compared to $37.6 million in 2012 and $13.7 million in 2011. Net cash provided in 2013 resulted primarily from net proceeds of $12.0 million from sales of our common stock through Cantor and $0.6 million from the exercise of warrants, stock options and stock purchase rights, partially offset by principal payments under the Loan Agreement of $7.2 million. Net cash provided in 2012 included net proceeds from the draw-down of the second tranche loan of $15.0 million from the Lenders; $17.6 million from sales of our common stock through Cantor; $3.1 million of the $25.0 million payment allocated to the fair value of warrants issued to RPI, and $1.9 million from the exercise of warrants, stock options and stock purchase rights. Net cash provided in 2011 consisted primarily of net proceeds of $9.6 million from the Loan Agreement and $4.1 million from sales of our common stock through Cantor.

Operating Cash Requirements

We expect to continue to incur substantial operating losses in the future. We will not receive any product revenue until a product candidate has been approved by the FDA or similar regulatory agencies in other countries, and has been successfully commercialized, if at all. We will need to raise substantial additional funding to complete the development and potential commercialization of vosaroxin. Additionally, we may evaluate in-licensing and acquisition opportunities to gain access to new drugs or drug targets that would fit with our strategy. Any such transaction would likely increase our funding needs in the future.

Our future funding requirements will depend on many factors, including but not limited to:

- the rate of progress and cost of our clinical trials, including the VALOR trial in particular;
- the need for additional or expanded clinical trials;
- the timing, economic and other terms of any licensing, collaboration or other similar arrangement into which we may enter;
- the costs and timing of seeking and obtaining FDA and other regulatory approvals;
- the extent of our other development activities, including our in-license agreements;
- the costs associated with building or accessing commercialization and additional manufacturing capabilities and supplies;
- the costs of acquiring or investing in businesses, product candidates and technologies, if any;
- the costs of filing, prosecuting, defending and enforcing any patent claims and other intellectual property rights;
- the effect of competing technological and market developments; and
- the costs, if any, of supporting our arrangements with Biogen Idec and Millennium.

We believe that we currently have the resources to fund our operations at least through 2014. We will need to raise substantial additional capital to complete the development and potential commercialization of vosaroxin. Until we can generate a sufficient amount of licensing or collaboration or product revenue to finance our cash requirements, which we may never do, we expect to finance our future cash needs primarily through warrant exercises, equity issuances, debt arrangements, one or more possible licenses, collaborations or other similar arrangements with respect to development and/or commercialization rights to vosaroxin, or a combination of the above.

Our failure to raise significant additional capital in the future would force us to delay or reduce the scope of our vosaroxin development program, potentially including any regulatory filings related to the VALOR trial, and/or limit or cease our operations. Any one of the foregoing would have a material adverse effect on our business, financial condition and results of operations.

Contractual Obligations

The following table summarizes our long-term contractual obligations as of December 31, 2013 (in thousands):

	Payments Due by Period				
	Total	Less Than 1 Year	1-3 Years	3-5 Years	After 5 Years
Long-term debt obligations(1)	$20,328	$ 10,576	$ 9,752	$ —	$ —
Operating lease obligations(2)	$ 48	$ 48	$ —	$ —	$ —

(1) Includes interest and final payment of 3.75% of the aggregate amount drawn. Upon the occurrence of an event of default, as defined in the Loan Agreement, and following any applicable cure periods, a default interest rate of an additional 5% may be applied to the outstanding loan balances, and the Lenders may declare all outstanding obligations immediately due and payable and take such other actions as set forth in the Loan Agreement.

(2) Operating lease obligations relate solely to the lease of 15,378 square feet of office space in a building at 395 Oyster Point Boulevard in South San Francisco, California, which is currently our corporate headquarters. This lease was entered into in December 2006 and expired on February 28, 2014. In January 2014, we executed a new lease agreement for the same premises, which expires on April 30, 2015. The total lease obligation of $0.4 million under this new lease is excluded from the above table.

The above amounts exclude potential payments under:

- our 2003 license agreement with Dainippon, pursuant to which we are required to make certain milestone payments in the event we file new drug applications in the United States, Europe or Japan, and if we receive regulatory approvals in any of these regions, for cancer-related indications. If vosaroxin is approved for a non-cancer indication, an additional milestone payment becomes payable to Dainippon. We are also required to make royalty payments to Dainippon in the event that vosaroxin is commercialized.

- our Royalty Agreement with RPI, pursuant to which we are required to make certain revenue participation payments in the event that vosaroxin is commercialized.

- our December 2013 second amended and restated collaboration agreement with Biogen Idec and our January 2014 amended license agreement with Millennium, pursuant to which we are required to make certain milestone and royalty payments.

We also have agreements with CROs, clinical sites and other third party contractors for the conduct of our clinical trials. We generally make payments to these entities based upon the activities they perform related to the particular clinical trial. There are generally no penalty clauses for cancellation of these agreements if notice is duly given and payment is made for work performed by the third party under the related agreement.

Off-Balance Sheet Arrangements

Since our inception, we have not had any off-balance sheet arrangements or relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or variable interest entities, which are typically established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

ITEM 7A: *QUALITATIVE AND QUANTITATIVE DISCLOSURES ABOUT MARKET RISK*

Interest Rate and Market Risk

As of December 31, 2013 and 2012, we had $39.3 million and $71.2 million, respectively, in cash, cash equivalents and marketable securities. The securities in our investment portfolio are not leveraged and are classified as available-for-sale, which, due to their short-term nature, are subject to minimal interest rate risk. We currently do not hedge our interest rate risk exposure. Because of the short-term maturities of our investments, we do not believe that a change in market rates would have a significant impact on the value of our investment portfolio.

The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. To achieve this objective, we maintain our portfolio of cash equivalents and short-term and long-term investments in a variety of securities, including money market funds and U.S. and European government obligations and corporate debt securities. These securities are classified as available for sale and consequently are recorded on the balance sheet at fair value with unrealized gains or losses reported as a separate component of accumulated other comprehensive (loss) income. Substantially all investments mature within approximately one year from the date of purchase. Our holdings of the securities of any one issuer, except obligations of the U.S. Treasury or U.S. Treasury guaranteed securities, do not exceed 10% of the portfolio. If interest rates rise, the market value of our investments may decline, which could result in a realized loss if we are forced to sell an investment before its scheduled maturity. We do not utilize derivative financial instruments to manage our interest rate risks.

The tables below present the original principal amounts and weighted-average interest rates by year of maturity for our investment portfolio as of December 31 of each year, by effective maturity (in thousands, except percentages):

	Expected Maturity		Total Fair Value as of December 31, 2013
	0-3 months	Over 3 months	
Available-for-sale securities	$20,387	$10,368	$ 30,755
Average interest rate	0.2%	0.3%	

	Expected Maturity		Total Fair Value as of December 31, 2012
	0-3 months	Over 3 months	
Available-for-sale securities	$30,849	$39,835	$ 70,684
Average interest rate	0.2%	0.3%	

Foreign Currency Exchange Rate Risk

We consider our direct exposure to foreign exchange rate fluctuations to be minimal. Invoices for certain services provided to us are denominated in foreign currencies, including the euro and British pound, among others. Therefore, we are exposed to adverse movements in the related foreign currency exchange rates. To manage this risk, we may purchase certain European currencies or highly-rated investments denominated in those currencies, subject to similar criteria as for other investments allowed by our investment policy. We do not make these purchases for trading or speculative purposes, and there is no guarantee that the related gains and losses will substantially offset each other. As of December 31, 2013 and 2012, we held investments denominated in Euros with an aggregate fair value of $2.6 million and $4.5 million, respectively. The balances are recorded at their fair value based on the current exchange rate as of each balance sheet date. The resulting exchange gains or losses and those from amounts payable for services originally denominated in foreign currencies are recorded in other income (expense) in the statements of operations and comprehensive (loss) income.

ITEM 8: ***FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA***

Index to Consolidated Financial Statements

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Sunesis Pharmaceuticals, Inc.

We have audited the accompanying consolidated balance sheets of Sunesis Pharmaceuticals, Inc. as of December 31, 2013 and 2012, and the related consolidated statements of operations and comprehensive (loss) income, stockholders' (deficit) equity, and cash flows for each of the three years in the period ended December 31, 2013. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

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

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Sunesis Pharmaceuticals, Inc. at December 31, 2013 and 2012, and the consolidated results of its operations and comprehensive (loss) income and its cash flows for each of the three years in the period ended December 31, 2013, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Sunesis Pharmaceuticals, Inc.'s internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control-Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 framework) and our report dated March 6, 2014 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Redwood City, California
March 6, 2014

SUNESIS PHARMACEUTICALS, INC.

CONSOLIDATED BALANCE SHEETS
(In thousands, except per share amounts)

	December 31, 2013	December 31, 2012
ASSETS		
Current assets:		
Cash and cash equivalents	$ 15,121	$ 14,940
Marketable securities	24,172	56,287
Prepaids and other current assets	1,199	1,705
Total current assets	40,492	72,932
Property and equipment, net	23	43
Deposits and other assets	10	42
Total assets	$ 40,525	$ 73,017
LIABILITIES AND STOCKHOLDERS' (DEFICIT) EQUITY		
Current liabilities:		
Accounts payable	$ 953	$ 78
Accrued clinical expense	4,750	5,449
Accrued compensation	1,719	1,465
Other accrued liabilities	1,645	2,113
Current portion of deferred revenue	7,956	7,956
Current portion of notes payable	9,018	6,610
Warrant liability	7,931	8,070
Total current liabilities	33,972	31,741
Non-current portion of deferred revenue	3,712	11,668
Non-current portion of notes payable	9,025	17,651
Commitments		
Stockholders' (deficit) equity:		
Preferred stock, $0.0001 par value; 10,000 shares authorized as of December 31, 2013; no shares issued and outstanding as of December 31, 2013 and 2012	—	—
Common stock, $0.0001 par value; 400,000 shares authorized as of December 31, 2013; 54,344 and 51,565 shares issued and outstanding as of December 31, 2013 and 2012, respectively	5	5
Additional paid-in capital	473,509	457,011
Accumulated other comprehensive (loss) income	(3)	38
Accumulated deficit	(479,695)	(445,097)
Total stockholders' (deficit) equity	(6,184)	11,957
Total liabilities and stockholders' (deficit) equity	$ 40,525	$ 73,017

See accompanying notes to consolidated financial statements.

SUNESIS PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE (LOSS) INCOME
(In thousands, except per share amounts)

	Year Ended December 31,		
	2013	2012	2011
Revenue:			
License and other revenue	$ 7,956	$ 3,754	$ 5,000
Total revenues	7,956	3,754	5,000
Operating expenses:			
Research and development	28,891	29,185	22,563
General and administrative	10,838	9,175	8,303
Total operating expenses	39,729	38,360	30,866
Loss from operations	(31,773)	(34,606)	(25,866)
Interest expense	(2,917)	(1,855)	(259)
Other income (expense), net	92	(7,490)	5,984
Net loss	(34,598)	(43,951)	(20,141)
Unrealized (loss) gain on available-for-sale securities	(41)	19	34
Comprehensive loss	$(34,639)	$(43,932)	$(20,107)
Basic and diluted loss per common share:			
Net loss	$(34,598)	$(43,951)	$(20,141)
Shares used in computing basic and diluted loss per common share	52,249	48,146	46,412
Basic and diluted loss per common share	$ (0.66)	$ (0.91)	$ (0.43)

See accompanying notes to consolidated financial statements.

SUNESIS PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF STOCKHOLDERS' (DEFICIT) EQUITY

(In thousands)

	Common Stock		Additional Paid-In Capital	Accumulated Other Comprehensive (Loss) Income	Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Amount				
Balance as of December 31, 2010	45,372	$ 5	$423,262	$ (15)	$(381,005)	$ 42,247
Issuance of $4,178 of common stock through controlled equity offering facilities, net of issuance costs of $125	1,302	—	4,053	—	—	4,053
Issuance of common stock under employee stock purchase plans	62	—	68	—	—	68
Issuance of common stock to employees	38	—	—	—	—	—
Issuance of warrants to purchase common stock	—	—	371	—	—	371
Stock-based compensation expenses—employees	—	—	1,369	—	—	1,369
Stock-based compensation expenses—non-employees	—	—	19	—	—	19
Net loss	—	—	—	—	(20,141)	(20,141)
Unrealized gain on available-for-sale securities	—	—	—	34	—	34
Balance as of December 31, 2011	46,774	5	429,142	19	(401,146)	28,020
Issuance of $18,124 of common stock through controlled equity offering facilities, net of issuance costs of $504	3,714	—	17,620	—	—	17,620
Issuance of common stock pursuant to warrant exercises	801	—	3,130	—	—	3,130
Issuance of common stock pursuant to stock option exercises	146	—	330	—	—	330
Issuance of common stock under employee stock purchase plans	84	—	172	—	—	172
Issuance of common stock to employees	46	—	—	—	—	—
Issuance of warrants to purchase common stock	—	—	3,893	—	—	3,893
Stock-based compensation expenses—employees	—	—	2,402	—	—	2,402
Stock-based compensation expenses—non-employees	—	—	322	—	—	322
Net loss	—	—	—	—	(43,951)	(43,951)
Unrealized gain on available-for-sale securities	—	—	—	19	—	19
Balance as of December 31, 2012	51,565	5	457,011	38	(445,097)	11,957
Issuance of $12,357 of common stock through controlled equity offering facilities, net of issuance costs of $371	2,535	—	11,986	—	—	11,986
Issuance of common stock pursuant to warrant exercises	18	—	88	—	—	88
Issuance of common stock pursuant to stock option exercises	104	—	230	—	—	230
Issuance of common stock under employee stock purchase plans	97	—	309	—	—	309
Issuance of common stock to employees	25	—	—	—	—	—
Stock-based compensation expenses—employees	—	—	3,581	—	—	3,581
Stock-based compensation expenses—non-employees	—	—	304	—	—	304
Net loss	—	—	—	—	(34,598)	(34,598)
Unrealized gain on available-for-sale securities	—	—	—	(41)	—	(41)
Balance as of December 31, 2013	54,344	$ 5	$473,509	$ (3)	$(479,695)	$ (6,184)

See accompanying notes to consolidated financial statements.

SUNESIS PHARMACEUTICALS, INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2013	2012	2011
Cash flows from operating activities			
Net loss	$(34,598)	$(43,951)	$(20,141)
Adjustments to reconcile loss to net cash used in operating activities:			
Stock-based compensation expense	3,885	2,724	1,388
Depreciation and amortization	20	31	56
Amortization of debt discount and debt issuance costs	621	400	56
(Decrease) increase in fair value of warrant liability	(96)	7,509	(5,878)
Foreign exchange (gain) loss on marketable securities	(142)	(82)	244
Gain on sale of property and equipment	—	(11)	(33)
Changes in operating assets and liabilities:			
Prepaids and other assets	489	(98)	(343)
Accounts payable	875	(580)	242
Accrued clinical expense	(699)	3,079	796
Accrued compensation	254	191	261
Other accrued liabilities	(76)	522	516
Deferred revenue	(7,956)	19,624	—
Net cash used in operating activities	(37,423)	(10,642)	(22,836)
Cash flows from investing activities			
Purchases of property and equipment	—	—	(15)
Proceeds from sale of property and equipment	—	11	34
Purchases of marketable securities	(26,894)	(67,608)	(52,082)
Proceeds from maturities of marketable securities	59,110	46,226	56,241
Net cash provided by (used in) investing activities	32,216	(21,371)	4,178
Cash flows from financing activities			
Proceeds from notes payable, net	—	14,982	9,625
Principal payments on notes payable	(7,182)	—	—
Proceeds from issuance of common stock through controlled equity offering facilities, net	11,986	17,620	4,053
Fair value of warrants issued in connection with royalty agreement	—	3,122	—
Proceeds from exercise of warrants, stock options and stock purchase rights	584	1,918	68
Net cash provided by financing activities	5,388	37,642	13,746
Net increase (decrease) in cash and cash equivalents	181	5,629	(4,912)
Cash and cash equivalents at beginning of period	14,940	9,311	14,223
Cash and cash equivalents at end of period	$ 15,121	$ 14,940	$ 9,311
Supplemental disclosure of cash flow information			
Interest paid	$ 2,006	$ 1,165	$ 109
Supplemental disclosure of non-cash activities			
Transfer of intrinsic value of exercised warrants to additional paid-in capital	$ 43	$ 1,715	$ —
Fair value of warrants issued in connection with notes payable	$ —	$ 770	$ 371
Cashless exercise of warrants	$ —	$ 402	$ —

See accompanying notes to consolidated financial statements.

SUNESIS PHARMACEUTICALS, INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

1. Company Overview

Description of Business

Sunesis Pharmaceuticals, Inc. (the "Company" or "Sunesis") was incorporated in the state of Delaware on February 10, 1998, and its facilities are located in South San Francisco, California. Sunesis is a biopharmaceutical company focused on the development and commercialization of new oncology therapeutics for the treatment of solid and hematologic cancers. The Company's primary activities since incorporation have been conducting research and development internally and through corporate collaborators, in-licensing and out-licensing pharmaceutical compounds and technology, conducting clinical trials and raising capital.

In September 2013, the Company completed enrollment of a Phase 3, multi-national, randomized, double-blind, placebo-controlled, pivotal clinical trial of vosaroxin in combination with cytarabine in patients with relapsed or refractory acute myeloid leukemia (the "VALOR trial").

Significant Risks and Uncertainties

The Company has incurred significant losses and negative cash flows from operations since its inception, and as of December 31, 2013, had cash, cash equivalents and marketable securities totaling $39.3 million and an accumulated deficit of $479.7 million.

The Company will need to raise substantial additional capital to complete the development and potential commercialization of vosaroxin, and expects to finance its future cash needs primarily through warrant exercises, equity issuances, debt arrangements, one or more possible licenses, collaborations or other similar arrangements with respect to development and/or commercialization rights to vosaroxin, or a combination of the above.

Concentrations of Credit Risk

In accordance with its investment policy, the Company invests cash that is not currently being used for operational purposes. The policy allows for the purchase of low risk debt securities issued by: (a) the United States and certain European governments and government agencies, and (b) highly rated banks and corporations, denominated in U.S. dollars, Euros or British pounds, subject to certain concentration limits. The policy limits maturities of securities purchased to no longer than 18 months and the weighted average maturity of the portfolio to nine months. Management believes these guidelines ensure both the safety and liquidity of any investment portfolio the Company may hold.

Financial instruments that potentially subject the Company to concentrations of credit risk generally consist of cash, cash equivalents and marketable securities. The Company is exposed to credit risk in the event of default by the institutions holding its cash, cash equivalents and any marketable securities to the extent of the amounts recorded in the balance sheets.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("GAAP").

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Sunesis Europe Limited, a United Kingdom corporation, and Sunesis Pharmaceuticals (Bermuda) Ltd., which was incorporated in Bermuda in June 2013, and a limited partnership, Sunesis Pharmaceuticals International LP, which was formed in Bermuda in July 2013. All intercompany balances and transactions have been eliminated in consolidation.

Segment Reporting

Management has determined that the Company operates as a single reportable segment.

Significant Estimates and Judgments

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the Company's financial statements and notes thereto. Actual results could differ materially from these estimates. Significant estimates, assumptions and judgments made by management include those related to the valuation of equity and related instruments, revenue recognition, stock-based compensation and clinical trial accounting.

Cash Equivalents and Marketable Securities

The Company considers all highly liquid securities with original maturities of three months or less from the date of purchase to be cash equivalents, which generally consist of money market funds and corporate debt securities. Marketable securities consist of securities with original maturities of greater than three months, which may include U.S. and European government obligations and corporate debt securities.

Management determines the appropriate classification of securities at the time of purchase. The Company generally classifies its entire investment portfolio as available-for-sale. The Company views its available-for-sale portfolio as available for use in current operations. Accordingly, the Company classifies all investments as short-term, even though the stated maturity may be more than one year from the current balance sheet date. Available-for-sale securities are carried at fair value, with unrealized gains and losses reported in accumulated other comprehensive (loss) income, which is a separate component of stockholders' (deficit) equity.

The amortized cost of securities is adjusted for amortization of premiums and accretion of discounts to maturity. Such amortization and accretion is included in other income (expense) in the statements of operations and comprehensive (loss) income. Realized gains and losses and declines in value judged to be other-than-temporary on available-for-sale securities, if any, are also recorded to other income (expense). The cost of securities sold is based on the specific-identification method.

Invoices for certain services provided to the Company are denominated in foreign currencies. To manage the risk of future movements in foreign exchange rates that would affect such amounts, the Company may purchase certain European currencies or highly-rated investments denominated in those currencies, subject to similar criteria as for other investments allowed by the Company's investment policy. There is no guarantee that the related gains and losses will substantially offset each other, and the Company may be subject to significant exchange gains or losses as currencies fluctuate from quarter to quarter. To date, the Company has purchased Euros and Euro-denominated obligations of foreign governments and corporate debt, and as of December 31, 2013, held investments denominated in Euros with an aggregate fair value of $2.6 million. These cash, cash equivalent and short-term investment balances are recorded at their fair value based on the current exchange rate as of each balance sheet date. The resulting exchange gains or losses and those from amounts payable for services originally denominated in foreign currencies are both recorded in other income (expense) in the statements of operations and comprehensive (loss) income.

Fair Value Measurements

The Company measures cash equivalents, marketable securities and warrant liabilities at fair value on a recurring basis using the following hierarchy to prioritize valuation inputs, in accordance with applicable GAAP:

Level 1 - quoted prices (unadjusted) in active markets for identical assets and liabilities that can be accessed at the measurement date

Level 2 - inputs other than quoted prices included within Level 1 that are observable, either directly or indirectly

Level 3 - unobservable inputs

The Company's Level 2 valuations of marketable securities are generally derived from independent pricing services based upon quoted prices in active markets for similar securities, with prices adjusted for yield and number of days to maturity, or on industry models using data inputs, such as interest rates and prices that can be directly observed or corroborated in active markets.

The fair value of the Company's liability for warrants issued in connection with the 2010 Offering (see Note 10) is determined using the Black-Scholes model, which requires inputs such as the expected term of the warrants, share price volatility, expected dividend yield and risk-free interest rate. As some of these inputs are unobservable, and require significant analysis and judgment to measure, these variables are classified as Level 3.

The Company does not measure cash, prepayments, accounts payable, accrued liabilities, deferred revenue and notes payable at fair value, as their carrying amounts approximated the fair value as of December 31, 2013 and 2012.

Property and Equipment

Property and equipment are stated at cost, less accumulated depreciation and amortization. Depreciation is determined using the straight-line method over the estimated useful lives of the respective assets, generally three to five years. Leasehold improvements are amortized on a straight-line basis over the shorter of their estimated useful lives or the term of the lease.

Accounting for Royalty Agreement

The payment of $25.0 million by RPI under the Royalty Agreement (see Note 6) is non-refundable, and no revenue participation right payments will be made unless vosaroxin successfully completes the VALOR trial and is subsequently commercialized. Accordingly, the payment received from RPI is being accounted for as a payment for the Company to use commercially reasonable efforts to complete the VALOR trial and to commercialize vosaroxin. Therefore, the amount is to be deferred and recognized as revenue over the projected performance period under the agreement. However, the amount initially deferred was reduced by a portion of the payment representing the fair value of the warrants granted under the arrangement of $3.1 million, which was recorded to additional paid-in capital. The remaining $21.9 million was classified as deferred revenue and is being amortized to revenue over the related performance period.

Accounting for Notes Payable

The accounting for certain fees and expenses related to the Loan Agreement (see Note 8) is as follows. The facility fee is being accounted for as a debt discount and classified within notes payable on the Company's balance sheet. The fair value of the warrants issued in connection with the Loan Agreement have been recorded as a debt discount within notes payable and an increase to additional paid-in capital on the Company's balance

sheet. The debt discount is being amortized as interest expense over the term of the loan using the effective interest method. The final payment is being accreted as interest expense over the term of the loans using the effective interest method. The legal fees are being accounted for as deferred debt issuance costs within assets on the Company's balance sheet and are being amortized as other income (expense) over the term of the loans using the effective interest method.

Accounting for Equity Financing

In October 2010, the Company completed the 2010 Offering (see Note 10), in which the Company sold its common stock and warrants to purchase its common stock for aggregate gross proceeds of $15.5 million. Due to the potential for the warrants to be settled in cash upon the occurrence of certain transactions specified in the warrant agreements, the warrants are being accounted for as a derivative liability as opposed to permanent equity. Outstanding warrants under this arrangement are revalued to their fair value each period end, with the change in fair value recorded to other income (expense) in the statements of operations and comprehensive (loss) income.

Revenue Recognition

Revenue arrangements with multiple deliverables are accounted for in accordance with the Financial Accounting Standards Board Accounting Standards Codification, Subtopic 605-25, *Multiple-Element Arrangements* ("ASC 605-25"). Under ASC 605-25, revenue arrangements with multiple deliverables are divided into separate units of accounting based on whether certain criteria are met, including whether the delivered item has stand-alone value to the customer. Consideration is allocated among the separate units of accounting based on their respective fair value, and the applicable revenue recognition is applied to each of the separate units.

Non-refundable fees where the Company has no continuing performance obligations are recognized as revenues when collection is reasonably assured. In situations where continuing performance obligations exist, non-refundable fees are deferred and recognized ratably over the projected performance period.

Milestone payments from license or collaboration agreements which are substantive and at risk at the time the agreement is executed are recognized upon completion of the applicable milestone event. Royalty revenues, if any, will be recognized based on reported product sales by third-party licensees. Research funding from any future agreement will be recognized as the related research services are performed.

Research and Development

Research and development expense consists primarily of: (a) clinical trial costs, which include payments for work performed by contract research organizations ("CROs"), clinical trial sites, labs and other clinical service providers, and for drug packaging, storage and distribution; (b) drug manufacturing costs, which include costs for producing drug substance and drug product, and for stability and other testing; (c) personnel costs for related permanent and temporary employees; (d) other outside services and consulting costs; and (e) payments under license agreements. All research and development costs are expensed as they are incurred.

Clinical Trial Accounting

The Company records accruals for estimated clinical trial costs, which include payments for work performed by CROs and participating clinical trial sites. These costs are generally a significant component of research and development expense. Costs incurred for setting up clinical trial sites for participation in trials are generally non-refundable, and are expensed as incurred, with any refundable advances related to enrollment of the first patient recorded as prepayments and assessed for recoverability on a quarterly basis. Costs related to patient enrollment are accrued as patients progress through the clinical trial, including amortization of any first-patient prepayments. This amortization generally matches when the related services are rendered, however, these cost estimates may or may not match the actual costs incurred by the CROs or clinical trial sites, and if the

Company has incomplete or inaccurate information, the clinical trial accruals may not be accurate. The difference between accrued expenses based on the Company's estimates and actual expenses have not been significant to date.

Stock-Based Compensation

The Company grants options to purchase common stock to its employees, directors and consultants under its stock option plans. Under the Company's Employee Stock Purchase Plan, eligible employees can also purchase shares of the Company's common stock at 85% of the lower of the fair market value of the Company's common stock at the beginning of a 12-month offering period or at the end of one of the two related six-month purchase periods.

The Company values these share-based awards using the Black-Scholes option valuation model (the "Black-Scholes model"). The determination of fair value of share-based payment awards on the date of grant using the Black-Scholes model is affected by the Company's stock price as well as assumptions regarding a number of highly complex and subjective variables. These variables include, but are not limited to, the expected stock price volatility over the term of the awards and actual and projected employee stock option exercise behaviors and related estimated forfeitures.

Foreign Currency

Transactions that are denominated in a foreign currency are translated into U.S. dollars at the current exchange rate on the transaction date. Any foreign currency-denominated monetary assets and liabilities are subsequently remeasured at current exchange rates as of each balance sheet date, with gains or losses on foreign exchange recognized in other income (expense) in the statements of operations and comprehensive (loss) income.

Income Taxes

The Company accounts for income taxes under the liability method. Under this method, deferred tax assets and liabilities are determined based on the differences between the tax basis of assets and liabilities and their basis for financial reporting. Deferred tax assets or liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which temporary differences are expected to be recovered or settled. Valuation allowances are established when necessary to reduce deferred tax assets to the amounts expected to be realized. The Company's policy is to recognize interest charges and penalties as other expense.

3. Loss per Common Share

Basic loss per common share is calculated by dividing net loss by the weighted-average number of common shares outstanding for the period. Diluted net loss per common share is computed by dividing (a) net loss, less any anti-dilutive amounts recorded during the period for the change in the fair value of warrant liabilities, by (b) the weighted-average number of common shares outstanding for the period plus dilutive potential common shares as determined using the treasury stock method for options and warrants to purchase common stock. The following table represents the potential common shares issuable pursuant to outstanding securities as of the related period end dates that were excluded from the computation of diluted loss per common share because their inclusion would have had an anti-dilutive effect (in thousands):

	As of December 31,		
	2013	2012	2011
Warrants to purchase shares of common stock	9,978	10,359	9,034
Options to purchase shares of common stock	7,611	6,288	5,099
Outstanding securities not included in calculations	17,589	16,647	14,133

4. Financial Instruments

Financial Assets

The following tables summarize the estimated fair value of the Company's financial assets measured on a recurring basis as of the dates indicated, which were comprised solely of available-for-sale marketable securities with remaining contractual maturities of one year or less (in thousands):

December 31, 2013	Valuation Input Level	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	Level 1	$ 6,282	$ —	$ —	$ 6,282
U.S. corporate debt obligations	Level 2	13,509	—	(4)	13,505
U.S. commercial paper	Level 2	8,396	3	—	8,399
Foreign corporate debt obligations	Level 2	2,571	—	(2)	2,569
Total available-for-sale securities		30,758	3	(6)	30,755
Less amounts classified as cash equivalents		(6,583)	—	—	(6,583)
Amounts classified as marketable securities		$ 24,175	$ 3	$ (6)	$ 24,172

December 31, 2012	Valuation Input Level	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Money market funds	Level 1	$ 14,397	$ —	$ —	$ 14,397
U.S. corporate debt obligations	Level 2	7,156	—	(2)	7,154
U.S. commercial paper	Level 2	44,592	44	—	44,636
Foreign corporate debt obligations	Level 2	4,501	—	(4)	4,497
Total available-for-sale securities		70,646	44	(6)	70,684
Less amounts classified as cash equivalents		(14,397)	—	—	(14,397)
Amounts classified as marketable securities		$ 56,249	$ 44	$ (6)	$ 56,287

The following table summarizes the available-for-sale securities that were in an unrealized loss position as of December 31, 2013, each having been in such a position for less than 12 months, and none deemed to be other-than-temporarily impaired (in thousands):

December 31, 2013	Gross Unrealized Losses	Estimated Fair Value
U.S. corporate debt obligations	$ 4	$ 10,991
Foreign corporate debt obligations	2	2,568
Total available-for-sale securities in an unrealized loss position	$ 6	$ 13,559

No significant facts or circumstances have arisen to indicate that there has been any deterioration in the creditworthiness of the issuers of these securities. The gross unrealized losses are not considered to be significant and have generally been for relatively short durations. The Company does not intend to sell these securities before maturity and it is not likely that they will need to be sold prior to the recovery of their amortized cost basis. There were no sales of available-for-sale debt securities in the years ended December 31, 2013, 2012 and 2011.

Financial Liabilities

The following table summarizes the inputs and assumptions and estimated fair value of the Company's financial liabilities measured on a recurring basis as of the dates indicated, which were comprised solely of a liability for warrants issued in connection with an underwritten equity offering completed in 2010 (see Note 10):

	December 31, 2013	December 31, 2012
Inputs and assumptions:		
Fair market value of Company's common stock	$ 4.74	$ 4.20
Exercise price	$ 2.52	$ 2.52
Expected term (years)	1.8	2.8
Expected volatility	60.8%	78.7%
Risk-free interest rate	0.3%	0.3%
Expected dividend yield	0.0%	0.0%
Fair value:		
Estimated fair value per warrant share	$ 2.56	$ 2.59
Shares underlying outstanding warrants classified as liabilities (in thousands)	3,099	3,118
Total estimated fair value of outstanding warrants (in thousands)	$ 7,931	$ 8,070

The warrants have been classified as a derivative liability on the Company's balance sheet due to the potential for the warrants to be settled in cash upon the occurrence of certain transactions specified in the warrant agreements. The warrants were initially recorded at their fair value of $4.5 million. At each subsequent balance sheet date, the estimated fair value of the outstanding warrants is determined using the Black-Scholes model and recorded to the balance sheet, with the change in fair value recorded to other income (expense) in the statements of operations and comprehensive (loss) income.

The Black-Scholes model requires Level 3 inputs such as the expected term of the warrants and share price volatility. These inputs are subjective and generally require significant analysis and judgment to develop. Any changes in these inputs could result in a significantly higher or lower fair value measurement. The following table summarizes the changes in the fair value of the Company's Level 3 financial liabilities for the periods indicated (in thousands):

	Warrant Liability
Balance as of December 31, 2011	$ 2,276
Change in fair value of warrant liability	7,509
Exercise of warrants	(1,715)
Balance as of December 31, 2012	8,070
Change in fair value of warrant liability	(96)
Exercise of warrants	(43)
Balance as of December 31, 2013	$ 7,931

5. Other Accrued Liabilities

Other accrued liabilities as of December 31 were as follows (in thousands):

	2013	2012
Accrued outside services	$1,249	$1,595
Accrued professional services	263	243
Other accruals	133	275
Total other accrued liabilities	$1,645	$2,113

6. Royalty Agreement

In March 2012, the Company entered into a Revenue Participation Agreement (the "Royalty Agreement"), with RPI Finance Trust ("RPI"), an entity related to Royalty Pharma. In September 2012, pursuant to the provisions of the Royalty Agreement, RPI made a $25.0 million cash payment to the Company. The payment, less $3.1 million representing the fair value of the warrants granted under the arrangement, was initially classified as deferred revenue and is being amortized to revenue over the related performance period.

Revenue participation right payments will be made to RPI when and if vosaroxin is commercialized, at a rate of 6.75% of net sales of vosaroxin, on a product-by-product and country-by-country basis world-wide through the later of: (a) the expiration of the last to expire of certain specifically identified patents; (b) 10 years from the date of first commercial sale of such product in such country; or (c) the expiration of all applicable periods of data, market or other regulatory exclusivity in such country with respect to such product.

7. License Agreements

Overview

In August 2004, the Company entered into a collaboration agreement with Biogen Idec MA, Inc. ("Biogen Idec") to discover, develop and commercialize small molecule inhibitors of the human protein Raf kinase, including family members Raf-1, A-Raf, B-Raf and C-Raf (collectively "Raf") and up to five additional targets that play a role in oncology and immunology indications (the "Biogen Idec OCA"). In connection with the Company's June 2008 restructuring, the parties agreed to terminate the research obligations and related funding as of June 30, 2008.

In March 2011, as part of a series of agreements among the Company, Biogen Idec and Millennium Pharmaceuticals, Inc., a wholly-owned subsidiary of Takeda Pharmaceutical Company Limited, ("Millennium"), the Company entered into: (a) an amended and restated collaboration agreement with Biogen Idec (the "Biogen Idec 1st ARCA"); (b) a license agreement with Millennium (the "Millennium Agreement"); and (c) a termination and transition agreement among the Company, Biogen Idec and Millennium (the "Termination and Transition Agreement").

The Termination and Transition Agreement provided for (a) the termination of Biogen Idec's exclusive rights under the Biogen Idec OCA to all discovery programs under such agreement other than for small molecule inhibitors of the human protein Bruton's tyrosine kinase ("BTK"); (b) the permitted assignment to Millennium of all related Company collaboration assets and rights to Raf kinase and the human protein phosphoinositide-dependent kinase-1 ("PDK1"); and (c) the payment of $4.0 million upfront from Millennium to the Company, which was recorded as revenue in March 2011.

Biogen Idec

The Biogen Idec 1st ARCA amended and restated the Biogen Idec OCA, to provide for the discovery, development and commercialization of small molecule BTK inhibitors. Under this agreement, the Company no longer has research obligations, but licenses granted to Biogen Idec with respect to the research collaboration under the Biogen Idec OCA (other than the licenses transferred to Millennium under the Millennium Agreement) remain in effect.

In June 2012, the Company received an event-based payment of $1.5 million from Biogen Idec for the advancement of pre-clinical work in connection with the Biogen Idec 1st ARCA. Under this agreement, the Company is eligible to receive up to an additional $58.5 million in pre-commercialization event-based payments related to the development by Biogen Idec of the first two indications for licensed products against the BTK target. The Company is also eligible to receive royalty payments depending on related product sales.

In December 2013, the Company entered into a second amended and restated collaboration agreement with Biogen Idec (the "Biogen Idec 2nd ARCA"), which amended and restated the Biogen Idec 1st ARCA, to provide the Company with an exclusive worldwide license to develop, manufacture and commercialize SNS-062, a BTK inhibitor synthesized under the Biogen Idec 1st ARCA, solely for oncology indications. The Company may be required to make a $2.5 million milestone payment depending on its development of SNS-062 and royalty payments depending on related product sales of SNS-062. All other of Sunesis' rights and obligations contained in the Biogen Idec 1st ARCA remain unchanged, except that potential future royalty payments to Sunesis were reduced to equal those amounts due to Biogen Idec for potential future sales of SNS-062.

Millennium

Under the Millennium Agreement, the Company granted exclusive licenses to products against two oncology targets originally developed under the Biogen Idec OCA, Raf and PDK1, under substantially the same terms as under the Biogen Idec OCA.

In January 2014, the Company entered into an amended and restated license agreement with Millennium (the "Amended Millennium Agreement"), to provide the Company with an exclusive worldwide license to develop and commercialize preclinical inhibitors of PDK1. In connection with execution of the Amended Millennium Agreement, the Company paid an upfront fee and may be required to make up to $9.2 million in pre-commercialization milestone payments depending on its development of PDK1 inhibitors and royalty payments depending on related product sales.

With respect to the Raf target product rights that were originally licensed to Millennium under the Millennium Agreement, the Company may in the future receive up to $57.5 million in pre-commercialization event-based payments related to the development by Millennium of the first two indications for each of the licensed products directed against the Raf target and royalty payments depending on related product sales. Millennium is currently conducting a Phase 1 clinical study of an oral investigative drug, MLN2480, which is licensed to them under the Amended Millennium Agreement.

8. Notes Payable

In October 2011, the Company entered into a Loan and Security Agreement (the "Loan Agreement") with Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation (collectively, the "Lenders"), under which the Company could borrow up to $25.0 million in two tranches (the "Loan Facility"). The first tranche of $10.0 million was funded upon closing of the transaction in October 2011, and the second tranche of $15.0 million was drawn by the Company in September 2012. In connection with the Loan Agreement, the Lenders were granted a perfected first priority security interest in substantially all of the Company's assets, other than intellectual property.

The interest rates for the first and second tranche are 8.95% and 9.00% per annum, respectively. Payments under the Loan Agreement are monthly in arrears and interest-only until February 1, 2013, followed by 32 equal monthly payments of principal and interest from March 1, 2013 to the scheduled maturity date of October 1, 2015. In addition, a final payment equal to $937,500 will be due on October 1, 2015, or such earlier date as specified in the Loan Agreement. If the Company prepays all or a portion of the loan prior to maturity, it will pay the Lenders a prepayment fee of between 0-1% of the principal amount prepaid. The weighted average annual effective interest rate on the notes payable, including the amortization of the debt discounts and accretion of the final payment, is 13.9%.

Aggregate future minimum payments due under the Loan Facility as of December 31, 2013 were as follows (in thousands):

Year ending December 31,	
2014	$10,576
2015	8,814
Total minimum payments	19,390
Less amount representing interest	(1,573)
Notes payable, gross	17,817
Unamortized discount on notes payable	(422)
Accretion of final payment	648
Notes payable, balance	18,043
Less current portion of notes payable	(9,018)
Non-current portion of notes payable	$ 9,025

9. Commitments and Contingencies

Commitments

The Company's operating lease obligation as of December 31, 2013 relate to the sublease of 15,378 square feet of office space in a building at 395 Oyster Point Boulevard in South San Francisco, California, which is currently the Company's headquarters. The lease agreement, as amended, was entered into in December 2006 and expired on February 28, 2014. On January 14, 2014, a new lease agreement was entered into for the same premises, which expires on April 30, 2015. This lease contains an option to extend the lease for an additional six month period.

Aggregate non-cancelable future minimum rental payments under the operating lease as of December 31, 2013 were as follows (in thousands):

Year Ending December 31:	Payments
2014	$ 48
Total rental payments	$ 48

Aggregate non-cancelable future minimum rental payments under operating leases as of December 31, 2013, including the effect of the new lease executed in January 2014, were as follows (in thousands):

Year Ending December 31:	Payments
2014	$ 332
2015	114
Total rental payments	$ 446

The Company recognizes rent expense on a straight-line basis. The Company recorded rent expense of $0.3 million, $0.4 million and $0.4 million for the years ended December 31, 2013, 2012 and 2011, respectively.

Contingencies

From time to time, the Company may be involved in legal proceedings, as well as demands, claims and threatened litigation, which arise in the normal course of its business or otherwise. The ultimate outcome of any

litigation is uncertain and unfavorable outcomes could have a negative impact on the Company's results of operations and financial condition. Regardless of outcome, litigation can have an adverse impact on the Company because of the defense costs, diversion of management resources and other factors. The Company is not currently involved in any material legal proceedings.

10. Stockholders' Equity

Preferred Stock

The Company has 10,000,000 shares of authorized preferred stock available for issuance in one or more series. Upon issuance, the Company can determine the rights, preferences, privileges and restrictions thereof. These rights, preferences and privileges could include dividend rights, conversion rights, voting rights, terms of redemption, liquidation preferences, sinking fund terms and the number of shares constituting any series or the designation of such series, any or all of which may be greater than the rights of common stock. There were no shares of preferred stock outstanding as of December 31, 2013 and 2012.

Common Stock

Holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders of the Company. Subject to the preferences that may be applicable to any outstanding shares of preferred stock, the holders of common stock are entitled to receive ratably such dividends, if any, as may be declared by the Board of Directors. Under the terms of the Loan Agreement with the Lenders, the Company is precluded from paying cash dividends without the prior written consent of the Lenders.

Controlled Equity Offerings

In August 2011, the Company entered into a Controlled Equity Offering℠ sales agreement (the "Sales Agreement"), with Cantor Fitzgerald & Co. ("Cantor"), as agent and/or principal, pursuant to which the Company could issue and sell shares of its common stock having an aggregate gross sales price of up to $20.0 million. In April 2013, the Sales Agreement was amended to provide for an increase of $30.0 million in the aggregate gross sales price under the Sales Agreement. The Company will pay Cantor a commission of 3.0% of the gross proceeds from any common stock sold through the Sales Agreement, as amended.

During the year ended December 31, 2013, the Company sold an aggregate of 2,534,991 shares of common stock under the Sales Agreement, as amended, at an average price of approximately $4.87 per share for gross proceeds of $12.4 million and net proceeds of $12.0 million, after deducting Cantor's commission. As of December 31, 2013, $21.5 million of common stock remained available to be sold under this facility.

In January and February 2014, the Company sold an aggregate of 1,024,718 shares of common stock under the Sales Agreement, as amended, at an average price of approximately $4.75 per share for gross proceeds of $4.9 million and net proceeds of $4.7 million, after deducting Cantor's commission. As of February 28, 2014, $16.7 million of common stock remained available to be sold under the Sales Agreement, as amended, subject to certain conditions as specified in the agreement.

2010 Offering

In October 2010, the Company completed an underwritten offering, pursuant to which the Company issued an aggregate of 7,357,610 shares of common stock and warrants to purchase 3,678,798 shares of common stock, for aggregate gross proceeds of $15.5 million (the "2010 Offering"). Net proceeds from the sale were $14.2 million, after deducting underwriting discounts and offering expenses. The warrants have an exercise price of $2.52 per share, and expire five years from the date of issuance.

The warrants have been classified as a derivative liability on the Company's balance sheet due to potential cash settlement of the warrants on terms, which do not include a cash limit, and upon the occurrence of certain transactions, as specified in the warrant agreements. At each balance sheet date, the estimated fair value of the outstanding warrants is determined using the Black-Scholes model and recorded to the balance sheet, with the change in fair value recorded to other income (expense) in the statements of operations and comprehensive (loss) income. During the year ended December 31, 2013, warrants to purchase an aggregate of 18,154 shares of common stock that were issued in connection with the 2010 Offering were exercised, resulting in cash proceeds to the Company of $46,000. As of December 31, 2013, warrants to purchase an aggregate of 3,099,478 shares of common stock issued in connection with the 2010 Offering remained outstanding, with a fair value of $7.9 million.

Equity Incentive Plans

The Company grants options to purchase shares of its common stock primarily to: (i) new employees, of which 25% of the shares subject to such options become exercisable on the first anniversary of the vesting commencement date, and 1/48th of the shares subject to such options become exercisable each month over the remainder of the four-year vesting period, (ii) existing employees, of which 1/48th of the shares subject to such options become exercisable each month following the date of grant over a four-year vesting period, (iii) new non-employee members of the board of directors, of which 50% of the shares subject to such options become exercisable on each of the first and second anniversary of the vesting commencement date, and (iv) continuing non-employee members of the board of directors, of which 1/24th of the shares subject to such options become exercisable each month following the date of grant over a two-year vesting period.

On March 15, 2011, the Company's Board of Directors adopted, and on June 3, 2011, the Company's stockholders approved, the 2011 Equity Incentive Plan (the "2011 Plan"). The 2011 Plan is intended as the successor to and continuation of the Company's 1998 Stock Plan, 2001 Stock Plan, 2005 Equity Incentive Award Plan and 2006 Employment Commencement Incentive Plan (collectively, the "Prior Plans"). No additional stock awards will be granted under the Prior Plans.

The Company initially reserved a total of 6,041,856 shares of common stock for issuance under the 2011 Plan, which is the sum of (i) the 539,803 shares remaining available as of the Effective Date under the Prior Plans, (ii) an additional 4,400,000 new shares, and (iii) that portion of the 1,102,053 shares underlying stock options granted and currently outstanding under the Prior Plans that expire or terminate for any reason prior to exercise or settlement or that are forfeited because of the failure to meet a contingency or condition required to vest such shares.

The number of shares of common stock available for issuance under the 2011 Plan automatically increases on January 1st of each year for a period of 10 years commencing on January 1, 2012 by an amount equal to: (i) 4.0% of the Company's outstanding shares of common stock on December 31st of the preceding calendar year, or (ii) a lesser amount determined by the Board of Directors. On January 1, 2014 and 2013, the number of shares of common stock available for issuance under the 2011 Plan was increased by 2,173,764 and 2,062,609 shares, respectively, which represented 4.0% of the Company's outstanding shares of common stock on December 31, 2013 and 2012, respectively.

During the year ended December 31, 2013, options to purchase 2,003,500 shares of the Company's common stock were granted under the 2011 Plan. As of December 31, 2013, there were 2,043,093 shares available for future grants under the 2011 Plan.

Employee Stock Purchase Plans

On March 5, 2011, the Company's Board of Directors adopted, and on June 3, 2011, the Company's stockholders approved, the 2011 Employee Stock Purchase Plan (the "2011 ESPP"). The 2011 ESPP is intended as the successor to the Company's 2005 Employee Stock Purchase Plan, which was terminated on June 3, 2011.

The 2011 ESPP permits eligible employees to purchase common stock at a discount through payroll deductions during defined offering periods. Eligible employees can purchase shares of the Company's common stock at 85% of the lower of the fair market value of the common stock at (i) the beginning of a 12-month offering period, or (ii) at the end of one of the two related 6-month purchase periods. No participant in the 2011 ESPP may be issued or transferred shares of common stock valued at more than $25,000 per calendar year. The initial offering under the 2011 ESPP commenced on June 13, 2011 and ended on May 31, 2012. Additional 12-month offerings will commence on June 1st of each year. The first such subsequent offering began on June 1, 2012.

The Company initially reserved a total of 500,000 shares of common stock for issuance under the 2011 ESPP. The number of shares of common stock available for issuance under the 2011 ESPP automatically increases on January 1st of each year for a period of 10 years commencing on January 1, 2012 by an amount equal to: (i) 1.0% of the Company's outstanding shares of common stock on December 31st of the preceding calendar year, or (ii) a lesser amount determined by the Board of Directors. On January 1, 2014 and 2013, the number of shares of common stock available for issuance under the 2011 ESPP was increased by 271,720 and nil shares, respectively, which represented 0.5% and 0.0% of the Company's outstanding shares of common stock on December 31, 2013 and 2012, respectively.

A total of 96,609 shares were issued under the 2011 ESPP during the year ended December 31, 2013. As of December 31, 2013, there were 259,001 shares available for future issuance under the ESPP.

Warrants

Warrants to purchase shares of the Company's common stock outstanding as of December 31, 2013 were as follows (in thousands, except per share amounts):

Date Issued	Shares	Exercise Price Per Share	Expiration
August 2005	15	$ 54.60	August 2015
October 2010	3,099	$ 2.52	October 2015
April 2009	2,876	$ 1.32	April 2016
October 2009	1,716	$ 1.32	October 2016
October 2011	77	$ 1.30	October 2016
September 2012	195	$ 3.85	September 2017
March 2012	1,000	$ 3.48	September 2017
March 2012	1,000	$ 4.64	September 2017
Total warrants outstanding	9,978		

Reserved Shares

Shares of the Company's common stock reserved for future issuance as of December 31, 2013 were as follows (in thousands):

	Shares Available for Future Grant	Outstanding Securities	Total Shares Reserved
Warrants	—	9,978	9,978
Stock option plans	2,043	7,611	9,654
Employee stock purchase plan	259	—	259
Total reserved shares of common stock	2,302	17,589	19,891

11. Stock-Based Compensation

Overview

Employee stock-based compensation expense is calculated based on the grant-date fair value of awards ultimately expected to vest, reduced for estimated forfeitures, and is recorded on a straight-line basis over the vesting period of the awards. Forfeitures are estimated at the time of grant, based on historical option cancellation information, and revised in subsequent periods if actual forfeitures differ from those estimates. The following table summarizes stock-based compensation expense related to the Company's stock-based awards for the periods indicated (in thousands):

	Year ended December 31,		
	2013	2012	2011
Research and development	$1,598	$1,030	$ 630
General and administrative	1,983	1,372	739
Employee stock-based compensation expense	3,581	2,402	1,369
Non-employee stock-based compensation expense	304	322	19
Total stock-based compensation expense	$3,885	$2,724	$1,388

Fair Value of Awards

The Company determines the fair value of stock-based awards on the grant date using the Black-Scholes model, which is impacted by the Company's stock price, as well as assumptions regarding a number of highly subjective variables. The following table summarizes the weighted-average assumptions used as inputs to the Black-Scholes model, and resulting weighted-average and total estimated grant date fair values of employee stock options granted during the periods indicated:

	Year Ended December 31,		
	2013	2012	2011
Assumptions:			
Expected term (years)	4.7	5.4	5.5
Expected volatility	90.0%	88.7%	85.0%
Risk-free interest rate	1.0%	1.1%	1.9%
Expected dividend yield	0.0%	0.0%	0.0%
Fair value:			
Weighted-average estimated grant date fair value per share	$ 3.63	$ 1.46	$ 1.42
Options granted to employees (in thousands)	1,785	2,310	4,179
Total estimated grant date fair value (in thousands)	$6,472	$3,377	$5,915

The estimated fair value of stock options that vested in the years ended December 31, 2013, 2012 and 2011, was $3.4 million, $2.1 million and $1.4 million, respectively. The Company based its assumptions for the expected term on historical cancellation and exercise data, and the contractual term and vesting terms of the awards. Expected volatility is based on historical volatility of the Company's common stock, as well as that for a mature peer group of companies in the same industry. The Company does not anticipate paying any cash dividends in the foreseeable future, and therefore uses an expected dividend yield of zero.

Option Plan Activity

The following table summarizes stock option activity for the Company's stock option plans in the periods presented (in thousands, except per share amounts):

	Number of Shares	Weighted Average Exercise Price Per Share	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
Outstanding as of December 31, 2012	6,288	$ 3.14		
Options granted	2,004	$ 4.68		
Options exercised	(104)	$ 2.22		
Options forfeited or expired	(577)	$ 2.39		
Outstanding as of December 31, 2013	7,611	$ 3.61	7.58	$ 14,624
Vested and expected to vest as of December 31, 2013	7,339	$ 3.60	7.53	$ 14,378
Exercisable as of December 31, 2013	4,193	$ 3.80	6.82	$ 9,281

The aggregate intrinsic value in the table above represents the total pre-tax intrinsic value (i.e., the difference between the Company's closing stock price on the last trading day of the period and the exercise price, multiplied by the number of in-the-money options) that would have been received by option holders if they had exercised all their options on December 31, 2013.

The intrinsic value of options exercised during the years ended December 31, 2013, 2012 and 2011 was $0.3 million, $0.2 million and zero, respectively. As the Company believes it is more likely than not that no stock option related tax benefits will be realized, the Company does not record any net tax benefits related to exercised options.

Total estimated unrecognized stock-based compensation cost related to unvested stock options was $7.8 million as of December 31, 2013, which is expected to be recognized over the respective vesting terms of each award. The weighted average term of the unrecognized stock-based compensation expense is 2.3 years.

12. Income Taxes

Loss before the provision for income taxes consisted of the following (in thousands):

	Year Ended December 31,		
	2013	2012	2011
U.S. operations	$(29,963)	$(43,951)	$(20,141)
Foreign operations	(4,635)	—	—
Loss before provision for income taxes	$(34,598)	$(43,951)	$(20,141)

No provision for income taxes was recorded in the periods presented due to tax losses incurred in each period. The income tax provision differs from the amount computed by applying the statutory income tax rate of 34% to pre-tax loss as follows (in thousands):

	Year Ended December 31,		
	2013	2012	2011
Tax at statutory rate	$(11,763)	$(14,943)	$(6,848)
Current year net operating losses and temporary differences for which no tax benefit is recognized	12,458	5,351	8,549
Deferred revenue	(2,704)	6,672	—
Non-cash expense (credit) related to financings	(16)	2,570	(1,995)
Other permanent differences	2,028	350	294
Provision for income taxes	$ —	$ —	$ —

Deferred income taxes reflect the net tax effects of loss and credit carry-forwards and temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets for federal and state income taxes are as follows (in thousands):

	December 31,	
	2013	2012
Deferred tax assets:		
Federal and state net operating loss carry-forwards	$ 123,490	$ 110,791
Federal and state research credit carry-forwards	12,064	10,586
Capitalized research costs	5,119	4,535
Deferred revenue	4,668	7,850
Stock-based compensation	3,212	2,281
Property and equipment	133	146
Accrued liabilities	341	194
Gross deferred tax assets	149,027	136,383
Valuation allowance	(149,027)	(136,383)
Net deferred tax assets	$ —	$ —

Realization of the deferred tax assets is dependent upon future taxable income, if any, the amount and timing of which are uncertain. Accordingly, the net deferred tax assets have been fully offset by a valuation allowance. The net valuation allowance increased by approximately $12.6 million, $13.7 million and $10.3 million during the years ended December 31, 2013, 2012 and 2011, respectively.

As of December 31, 2013, the Company had federal net operating loss carry-forwards of $326.2 million and federal research and development tax credit carry-forwards of $7.5 million. If not utilized, the federal net operating loss and tax credit carry-forwards will expire at various dates beginning in 2018. As of December 31, 2013, the Company had state net operating loss carry-forwards of $209.5 million, which begin to expire in 2014, and state research and development tax credit carry-forwards of $6.8 million, which do not expire.

Utilization of these net operating loss and tax credits carry-forwards may be subject to a substantial annual limitation due to the ownership change rules under Section 382 of the Internal Revenue Code of 1986, as amended (the "Code"). The limitations are applicable if an "ownership change," as defined in the Code, is deemed to have occurred or occurs in the future. The annual limitation may result in the expiration of net operating loss and credit carry-forwards before they can be utilized.

The Company recognizes the financial statement effect of tax positions when it is more likely than not that the tax positions will be sustained upon examination by the appropriate taxing authorities. As of December 31, 2013 and 2012, the Company had no unrecognized tax positions.

The Company files U.S. federal and California tax returns. The Company's wholly owned subsidiary, Sunesis Europe Limited, files tax returns in the United Kingdom. The Company's wholly owned subsidiary, Sunesis Pharmaceuticals (Bermuda) Ltd., is not required to file tax returns. To date, neither the Company nor Sunesis Europe Limited has been audited by the Internal Revenue Service, any state income tax authority or tax authority in the United Kingdom. Due to net operating loss carry-forwards, substantially all of the Company's tax years remain open to federal tax examination.

13. Guarantees and Indemnification

As permitted under Delaware law and in accordance with the Company's Bylaws, the Company indemnifies its officers and directors for certain events or occurrences, subject to certain limits, while the officer or director is or was serving at the Company's request in such capacity. The indemnification agreements with the Company's officers and directors terminate upon termination of their employment, but the termination does not affect claims for indemnification relating to events occurring prior to the effective date of termination. The maximum amount of potential future indemnification is unlimited; however, the Company's officer and director insurance policy reduces the Company's exposure and may enable the Company to recover a portion of any future amounts paid. The Company believes that the fair value of these indemnification agreements is minimal. In addition, in the ordinary course of business the Company enters into agreements, such as licensing agreements, clinical trial agreements and certain services agreements, containing standard indemnifications provisions. The Company believes that the likelihood of an adverse judgment related to such indemnification provisions is remote. Accordingly, the Company has not recorded any liabilities for any of these agreements as of December 31, 2013.

14. Subsequent Events

On March 4, 2014, the Company completed an underwritten offering of 4,650,000 shares of common stock and accompanying warrants at $9.25 per share of common stock, together with two warrants to each purchase one share of the Company's common stock, at exercise prices of $8.50 and $12.00 per share, respectively. Gross proceeds from the sale were $43.0 million, and net proceeds were approximately $40.0 million, after deducting the underwriting discount and estimated offering expenses payable by the Company. The warrants are exercisable only after unblinding of the VALOR trial. The first warrant will expire on or before the later of nine months after issuance and 30 days following unblinding of the VALOR trial, but no later than 24 months after issuance, and the second warrant will expire on or before the later of 18 months after issuance and 30 days following the PDUFA date of the VALOR trial, but in no event later than 24 months after issuance. The Company is assessing the accounting impact of the issuance of the warrants.

15. Selected Quarterly Financial Data (unaudited, and in thousands, except per share amounts)

The following table sets forth the Company's unaudited consolidated financial results for the last eight fiscal quarters.

	Three Months Ended							
	Mar. 31, 2013	June 30, 2013	Sep. 30, 2013	Dec. 31, 2013	Mar. 31, 2012	June 30, 2012	Sep. 30, 2012	Dec. 31, 2012
Revenue	$ 1,989	$ 1,989	$ 1,989	$ 1,989	$ 0	$ 1,500	$ 265	$ 1,989
Net loss:								
Basic	$ (11,624)	$ (8,190)	$ (7,607)	$ (7,177)	$ (13,924)	$ (8,579)	$ (17,396)	$ (4,052)
Diluted	$ (11,624)	$ (9,336)	$ (8,329)	$ (8,257)	$ (13,924)	$ (9,332)	$ (17,396)	$ (10,352)
Shares used in computing net loss per common share:								
Basic	51,587	51,630	51,698	54,060	46,793	46,953	47,398	51,412
Diluted	51,587	53,268	53,271	55,573	46,793	47,286	47,398	52,848
Net loss per common share:								
Basic	$ (0.23)	$ (0.16)	$ (0.15)	$ (0.13)	$ (0.30)	$ (0.18)	$ (0.37)	$ (0.08)
Diluted	$ (0.23)	$ (0.18)	$ (0.16)	$ (0.15)	$ (0.30)	$ (0.20)	$ (0.37)	$ (0.20)

ITEM 9. *CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE*

Not applicable.

ITEM 9A. *CONTROLS AND PROCEDURES*

Disclosure Controls and Procedures

Based on their evaluation as of December 31, 2013, our Chief Executive Officer and Chief Financial Officer, with the participation of management, have concluded that, subject to the limitations described below, our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act) were effective at the reasonable assurance level to ensure the information required to be disclosed by us in reports that we file or submit under the Exchange is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission rules and forms.

Management's Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act. Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles in the United States.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2013. Management based its assessment on the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (1992 framework) in *Internal Control—Integrated Framework*. Based on this evaluation, our management concluded that as of December 31, 2013, our internal control over financial reporting was effective at the reasonable assurance level.

The effectiveness of our internal control over financial reporting as of December 31, 2013 has been audited by Ernst & Young LLP, our independent registered public accounting firm, as stated in their attestation report, which is included herein.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting during the quarter ended December 31, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Controls

Our disclosure controls and procedures provide our Chief Executive Officer and Chief Financial Officer with only reasonable assurances that our disclosure controls and procedures will achieve their objectives. However, our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal control over financial reporting can or will prevent all human error. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Furthermore, the design of a control system must reflect the fact that there are internal resource constraints, and the benefit of controls must be weighed relative to their corresponding costs. Because of the limitations in all control systems, no evaluation of controls can provide complete assurance that all control issues and instances of error, if any, within our company are

detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur due to human error or mistake. Additionally, controls, no matter how well designed, could be circumvented by the individual acts of specific persons within the organization. The design of any system of controls is also based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated objectives under all potential future conditions.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Sunesis Pharmaceuticals, Inc.

We have audited Sunesis Pharmaceuticals, Inc.'s internal control over financial reporting as of December 31, 2013, based on criteria established in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (1992 framework) (the COSO criteria). Sunesis Pharmaceuticals, Inc.'s management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

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

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

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

In our opinion, Sunesis Pharmaceuticals, Inc. maintained, in all material respects, effective internal control over financial reporting as of December 31, 2013, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Sunesis Pharmaceuticals, Inc. as of December 31, 2013 and 2012, and the related consolidated statements of operations and comprehensive (loss) income, stockholders' (deficit) equity, and cash flows for each of the three years in the period ended December 31, 2013 of Sunesis Pharmaceuticals, Inc. and our report dated March 6, 2014 expressed an unqualified opinion thereon.

/s/ ERNST & YOUNG LLP

Redwood City, California
March 6, 2014

ITEM 9B. ***OTHER INFORMATION***

None.

PART III

Certain information required by Part III is omitted from this report because we will file with the SEC a definitive proxy statement pursuant to Regulation 14A, or the Proxy Statement, not later than 120 days after the year ended December 31, 2013, and certain information included therein is incorporated herein by reference.

ITEM 10. ***DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE***

Information responsive to this item regarding directors and director nominees, executive officers, the board of directors and its committees, and certain corporate governance matters is incorporated herein by reference to the information set forth under the captions "Election of Nominees to the Board of Directors," "Information About the Board of Directors and Corporate Governance" and "Certain Information with Respect to Executive Officers" in our definitive Proxy Statement.

Code of Business Conduct & Ethics

We have adopted a Code of Business Conduct & Ethics which applies to all of our directors, officers and employees. A copy of our Code of Business Conduct & Ethics can be found on our website, www.sunesis.com, in the section titled "*Investors & Media*" under the subsection titled "*Corporate Governance.*" Information found on our website is not incorporated by reference into this report. In addition, we intend to promptly disclose (1) the nature of any amendment to our Code of Business Conduct & Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or persons performing similar functions and (2) the nature of any waiver, including an implicit waiver, from a provision of our Code of Business Conduct & Ethics that is granted to one of these specified officers, the name of such person who is granted the waiver and the date of the waiver on our website in the future.

All additional information required by this Item 10 will be set forth in our definitive Proxy Statement and is incorporated in this report by reference.

ITEM 11. ***EXECUTIVE COMPENSATION***

Information responsive to this item is incorporated herein by reference to the information set forth under the captions "Executive Compensation and Related Information" and "Information About the Board of Directors and Corporate Governance" in our definitive Proxy Statement.

ITEM 12. ***SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS***

Ownership of Sunesis Securities

Information responsive to this item is incorporated herein by reference to the information set forth under the caption "Security Ownership of Certain Beneficial Owners and Management" in our definitive Proxy Statement.

Equity Compensation Plan Information

The following table provides certain information with respect to our equity compensation plans in effect as of December 31, 2013:

Plan Category	(A) Number of Securities to be Issued upon Exercise of Outstanding Options	(B) Weighted Average Exercise Price of Outstanding Options	(C) Number of Securities Remaining Available for Future Issuance Under Equity Compensation Plans (Excluding Securities Reflected in Column A)
Equity Compensation Plans Approved by Stockholders(1)	7,610,790(2)	$ 3.61	2,302,094(3)
Equity Compensation Plans Not Approved by Stockholders	—	$ —	—
Total	7,610,790	$ 3.61	2,302,094

(1) Includes securities issuable under our 2011 Equity Incentive Plan, or 2011 Plan, and 2011 Employee Stock Purchase Plan, or ESPP.

(2) Excludes purchase rights currently accruing under the ESPP. Offering periods under the ESPP are 12-month periods, which are comprised of two six-month purchase periods. Eligible employees may purchase shares of common stock at a price equal to 85% of the lower of the fair market value of the common stock at the beginning of each offering period or the end of each semi-annual purchase period. No participant in the ESPP may be issued or transferred shares of common stock valued at more than $25,000 per calendar year.

(3) Includes (i) 2,043,093 shares of common stock available for issuance under our 2011 Plan and (ii) 259,001 shares of common stock available for issuance under our ESPP. Beginning in 2012, the number of shares of common stock reserved under the 2011 Plan automatically increases on January 1st of each year by an amount equal to: (i) 4.0% of our shares of common stock outstanding on December 31st of the preceding calendar year, or (ii) a lesser amount determined by our Board of Directors. The number of shares of common stock reserved under our ESPP automatically increases on January 1st of each year by an amount equal to: (i) 1.0% of our shares of common stock outstanding on December 31st of the preceding calendar year, or (ii) a lesser amount determined by our Board of Directors.

ITEM 13. *CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE*

Information responsive to this item is incorporated herein by reference to the information set forth under the captions “Certain Relationships and Related Party Transactions” and “Information About the Board of Directors and Corporate Governance” in our definitive Proxy Statement.

ITEM 14. *PRINCIPAL ACCOUNTING FEES AND SERVICES*

Information responsive to this item is incorporated herein by reference to the information set forth under the caption “Independent Registered Public Accounting Firm” in our definitive Proxy Statement.

PART IV

ITEM 15. ***EXHIBITS, FINANCIAL STATEMENT SCHEDULES***

Exhibits and Financial Statement Schedules:

(a)(1) Financial Statements

(a)(2) Financial Statement Schedules

All financial statement schedules are omitted because they are not applicable, or the information is included in the financial statements or notes thereto.

(a)(3) Exhibits

A list of exhibits filed with this report or incorporated herein by reference is found in the Exhibit Index immediately following the signature page of this report.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Sunesis Pharmaceuticals, Inc. has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on March 6, 2014.

SUNESIS PHARMACEUTICALS, INC.

By: /S/ ERIC H. BJERKHOLT
Eric H. Bjerkholt
Executive Vice President, Corporate Development and Finance, Chief Financial Officer

POWER OF ATTORNEY KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Daniel N. Swisher, Jr. and Eric H. Bjerkholt, and each of them, as his true and lawful attorneys-in-fact and agents, with full power of substitution for him, and in his name in any and all capacities, to sign any and all amendments to this Annual Report on Form 10-K, and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done therewith, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, and any of them or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

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

Signature	Title	Date
/S/ JAMES W. YOUNG, PH.D. James W. Young, Ph.D.	Chairman of the Board	March 6, 2014
/S/ DANIEL N. SWISHER, JR. Daniel N. Swisher, Jr.	President, Chief Executive Officer and Director *(Principal Executive Officer)*	March 6, 2014
/S/ ERIC H. BJERKHOLT Eric H. Bjerkholt	Executive Vice President, Corporate Development and Finance, Chief Financial Officer *(Principal Financial Officer and Principal Accounting Officer)*	March 6, 2014
/S/ STEVE CARCHEDI Steve Carchedi	Director	March 6, 2014
/S/ MATTHEW K. FUST Matthew K. Fust	Director	March 6, 2014
/S/ STEVEN B. KETCHUM PH. D Steven B. Ketchum, Ph. D.	Director	March 6, 2014

Signature	Title	Date
/S/ HELEN S. KIM Helen S. Kim	Director	March 6, 2014
/S/ DAYTON MISFELDT Dayton Misfeldt	Director	March 6, 2014
/S/ HOMER L. PEARCE, PH.D. Homer L. Pearce, Ph.D.	Director	March 6, 2014
/S/ DAVID C. STUMP, M.D. David C. Stump, M.D.	Director	March 6, 2014

EXHIBIT INDEX

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation of the Registrant	10-K/A	000-51531	3.1	5/23/2007	
3.2	Amended and Restated Bylaws of the Registrant	8-K	000-51531	3.2	12/11/2007	
3.3	Certificate of Designation of the Series A Preferred Stock of the Registrant	8-K	000-51531	3.3	4/3/2009	
3.4	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant	S-8	333-160528	3.4	7/10/2009	
3.5	Certificate of Amendment to the Certificate of Designation of the Series A Preferred Stock of the Registrant	8-K	000-51531	3.4	11/2/2009	
3.6	Certificate of Amendment to the Certificate of Designation of the Series A Preferred stock of the Registrant	8-K	000-51531	3.5	1/21/2010	
3.7	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of the Registrant	8-K	000-51531	3.1	2/14/2011	
4.1	Reference is made to Exhibits 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 above.					
4.2	Specimen Common Stock certificate of the Registrant	10-K	000-51531	4.2	3/29/2011	
4.3	Form of Series A Common Stock Purchase Warrant	8-K	000-51531	4.1	2/27/2014	
4.4	Form of Series B Common Stock Purchase Warrant	8-K	000-51531	4.2	2/27/2014	
4.5	Form of Warrant Agency Agreement by and between the Registrant and American Transfer & Trust & Company, LLC	8-K	000-51531	4.3	2/27/2014	
10.1*	1998 Stock Plan and Form of Stock Option Agreement	S-1/A	333-121646	10.1	1/27/2005	
10.2*	2001 Stock Plan and Form of Stock Option Agreement	S-1	333-121646	10.2	12/23/2004	
10.3*	2005 Equity Incentive Award Plan, as amended, and Form of Stock Option Agreement	10-K/A	000-51531	10.3	4/30/2009	
10.4*	Employee Stock Purchase Plan and Enrollment Form	10-Q	000-51531	10.4	11/9/2006	
10.5*	Form of Indemnification Agreement for directors and executive officers	S-1	333-121646	10.5	12/23/2004	
10.6†	License Agreement, dated October 14, 2003, by and between the Registrant and Dainippon Sumitomo Pharma Co., Ltd. (formerly known as Dainippon Pharmaceutical Co., Ltd.)	S-1/A	333-121646	10.36	4/29/2005	

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.7	Warrant, dated August 25, 2005, issued to Horizon Technology Funding Company II LLC	S-1/A	333-121646	10.40	9/1/2005	
10.8	Warrant, dated August 25, 2005, issued to Horizon Technology Funding Company III LLC	S-1/A	333-121646	10.41	9/1/2005	
10.9	Warrant, dated August 25, 2005, issued to Oxford Finance Corporation	S-1/A	333-121646	10.42	9/1/2005	
10.10*	Amended and Restated 2006 Employment Commencement Incentive Plan	10-K/A	000-51531	10.32	4/30/2009	
10.11†	Sublease, dated December 22, 2006, by and between the Registrant and Oncology Therapeutics Network Joint Venture, L.P., for office space located at 395 Oyster Point Boulevard, South San Francisco, California	10-K	000-51531	10.47	3/17/2008	
10.12*	Forms of Stock Option Grant Notice and Stock Option Agreement under the 2005 Equity Incentive Award Plan	8-K	000-51531	10.52	9/19/2007	
10.13*	Second Amended and Restated Executive Severance Benefits Agreement, dated December 24, 2008, by and between Registrant and Daniel N. Swisher, Jr.	10-K	000-51531	10.44	4/3/2009	
10.14*	Second Amended and Restated Executive Severance Benefits Agreement, dated December 24, 2008, by and between Registrant and Eric H. Bjerkholt	10-K	000-51531	10.45	4/3/2009	
10.15*	Forms of Stock Option Grant Notice and Stock Option Agreement for Automatic Grants to Outside Directors under the 2005 Equity Incentive Award Plan	10-Q	000-51531	10.69	11/7/2008	
10.16*	Forms of Stock Option Grant Notice and Stock Option Agreement under the Amended and Restated 2006 Employment Commencement Incentive Plan	8-K	000-51531	10.71	12/23/2008	
10.17	Form of Warrant to purchase shares of Common Stock	8-K	000-51531	10.2	4/3/2009	
10.18	Sales Agreement, dated April 29, 2010, between the Registrant and Cantor Fitzgerald & Co.	8-K	000-51531	10.1	4/29/2010	
10.19	Underwriting Agreement, dated September 30, 2010, by and between the Registrant and Cowen and Company LLC	8-K	000-51531	1.1	10/1/2010	
10.20	Form of Warrant to Purchase Common Stock of the Registrant	8-K	000-51531	4.1	10/1/2010	
10.21	Master Services Agreement, dated June 21, 2010, by and between the Registrant and Icon Clinical Research Limited	10-K	000-51531	10.54	3/29/2011	

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.22	First Amendment to Master Services Agreement, dated August 1, 2008, by and between the Registrant and Aptuit, Inc. (as assignee of Quintiles, Inc.)	10-Q	000-51531	10.3	5/12/2011	
10.23	Amended and Restated Collaboration Agreement, dated March 31, 2011, by and between the Registrant and Biogen Idec MA Inc.	10-Q/A	000-51531	10.4	6/30/2011	
10.24	License Agreement, dated March 31, 2011, by and between the Registrant and Millennium Pharmaceuticals, Inc.	10-Q/A	000-51531	10.5	6/30/2011	
10.25	Termination and Transition Agreement, dated March 31, 2011, by and between the Registrant, Biogen Idec MA Inc. and Millennium Pharmaceuticals, Inc.	10-Q	000-51531	10.6	5/12/2011	
10.26*	Sunesis Pharmaceuticals, Inc. 2011 Equity Incentive Plan	S-8	333-174732	99.1	6/6/2011	
10.27*	Sunesis Pharmaceuticals, Inc. 2011 Employee Stock Purchase Plan	S-8	333-174732	99.2	6/6/2011	
10.28	Sales Agreement, dated August 11, 2011, between Sunesis Pharmaceuticals, Inc. and Cantor Fitzgerald & Co.	8-K	000-51531	10.1	8/11/2011	
10.29	Loan and Security Agreement among the Registrant, Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation, dated as of October 18, 2011	8-K	000-51531	10.1	10/19/2011	
10.30	Warrant to Purchase Stock issued to Horizon Technology Finance Corporation, dated as of October 18, 2011	8-K	000-51531	10.4	10/19/2011	
10.31*	Executive Severance Benefits Agreement, dated January 31, 2012, by and between the Registrant and Adam R. Craig	10-K	000-51531	10.56	3/14/2012	
10.32*	Forms of Stock Option Grant Notice and Option Agreement under the 2011 Equity Incentive Plan	10-K	000-51531	10.57	3/14/2012	
10.33*	Forms of Restricted Stock Unit Grant Notice and Restricted Stock Unit Agreement under the 2011 Equity Incentive Plan	10-K	000-51531	10.58	3/14/2012	
10.34†	Revenue Participation Agreement, dated March 29, 2012, by and between Sunesis Pharmaceuticals, Inc. and RPI Finance Trust	10-Q	000-51531	10.6	5/15/2012	
10.35	First Amendment to Loan and Security Agreement Among the Registrant, Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation, dated March 29, 2012	10-Q	000-51531	10.7	5/15/2012	

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.36†	Form of Warrant, dated March 29, 2012, issued to RPI Financial Trust	10-Q	000-51531	10.8	5/15/2012	
10.37	First Amendment of Sublease, dated January 14, 2013, by and between the Registrant and McKesson Specialty Care Distribution Joint Venture, LP (as successor in interest), for office space located at 395 Oyster Point Boulevard, South San Francisco, California	10-K	000-51531	10.60	3/13/2013	
10.38*	Amendment to Executive Severance Benefit Agreement, dated October 24, 2012, by and between the Registrant and Adam R. Craig	10-K	000-51531	10.61	3/13/2013	
10.39*	Sunesis Pharmaceuticals, Inc. 2013 Bonus Program	8-K	000-51531	10.1	3/27/2013	
10.40	Amendment No. 1 to Sales Agreement, dated August 11, 2011, between the Registrant and Cantor Fitzgerald & Co., dated April 10, 2013	8-K	000-51531	10.1	4/10/2013	
10.41	Termination and Registration Rights Agreement, dated June 7, 2013, by and among the Registrant and the investors identified on the signature pages thereto	8-K	000-51531	10.1	6/11/2013	
10.42	Non-Employee Director Compensation Information	10-Q	000-51531	10.3	8/2/2013	
10.43	Second Amendment to Loan and Security Agreement, dated October 18, 2011, by and between the Registrant, Oxford Finance LLC, Silicon Valley Bank and Horizon Technology Finance Corporation, dated September 23, 2013	10-Q	000-51531	10.1	11/12/2013	
10.44*	Offer Letter, dated January 10, 2014, by and between the Registrant and Joseph DePinto					X
10.45*	Executive Severance Benefits Agreement, dated March 6, 2014, by and between the Registrant and Joseph DePinto					X
10.46†	Second Amended and Restated Collaboration Agreement, dated December 16, 2013, by and between the Registrant and Biogen Idec MA Inc.					X
10.47†	Amended and Restated License Agreement, dated January 8, 2014, by and between the Registrant and Millennium Pharmaceuticals, Inc.					X
10.48	Lease Agreement, dated January 14, 2014, by and between the Registrant and Kashiwa Fudosan America, Inc., for office space located at 395 Oyster Point Boulevard, South San Francisco, California					X

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
10.49	Second Amendment of Sublease, dated January 16, 2014, by and between the Registrant and McKesson Specialty Care Distribution Joint Venture, LP, for office space located at 395 Oyster Point Boulevard, South San Francisco, California					X
10.50	Underwriting Agreement, dated February 27, 2014, by and between the Registrant and Cowen and Company, LLC	8-K	000-51531	1.1	2/27/2014	
21.1	Subsidiaries of the Registrant	10-Q	000-51531	21.1	8/02/2013	
23.1	Consent of Independent Registered Public Accounting Firm					X
24.1	Power of Attorney					(included on Signature page)
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act					X
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Exchange Act					X
32.1#	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 13a-14(b) or 15d-14(b) of the Exchange Act					X
101.INS	XBRL Instance Document					
101.SCH	XBRL Taxonomy Extension Schema Document					
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document					
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document					
101.LAB	XBRL Taxonomy Extension Labels Linkbase Document					
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document					

* Management contract, compensatory plan or arrangement.

† Portions of the exhibit have been omitted pursuant to a request for confidential treatment. The omitted information has been filed separately with the Securities and Exchange Commission.

In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule; Management's Reports on Internal Control over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the Certification furnished in Exhibit 32.1 hereto is deemed to accompany this Form 10-K and will not be filed for purposes of Section 18 of the Exchange Act. Such certification will not be deemed 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 10.44

Sunesis Pharmaceuticals, Inc.
www.sunesis.com
395 Oyster Point Boulevard, Suite 400
South San Francisco, CA 94080

January 10, 2014

Dear Joe:

On behalf of Sunesis Pharmaceuticals, Inc. (the "Company"), I am delighted to offer you the position of Executive Vice President, Chief Commercial Officer, reporting to me, at an annualized salary of $425.000.00 (less payroll deductions and required withholdings). Your base salary and bonus opportunity (described below) will be reviewed annually by the Chief Executive Officer of the Company for increases in such amounts.

Upon commencing employment with the Company, you will be granted an option to purchase 250,000 shares of common stock of the Company. This option will vest over a four-year period, with 25% of such options (62,500) vesting and becoming exercisable twelve months after grant and 1/48th of such options (5,208.33) vesting and becoming exercisable at the end of each month thereafter over the following 36 months. You will also be granted a second option upon commencing employment with the Company to purchase 50,000 shares which will be a milestone-based option that will vest and become exercisable upon, and subject to, the earlier of (i) the ten year anniversary of the date of grant of such option, and (ii) the date of your and your immediate family's permanent relocation and change of domicile to the San Francisco Bay Area, as supported by documentation reasonably acceptable to the Company. The options will be governed in all respects by the terms of a stock option agreement, grant notice, and the 2011 Equity Incentive Plan (the "Plan"), the forms of which have been provided to you. The per share exercise price of each option shall be equal to the fair market value of a share of Company common stock on the date of grant in accordance with the terms of the Plan.

You will be eligible to participate in our employee benefits programs, which include medical, dental, life and vision insurance, a 401(k) retirement program, and paid vacation time, subject to the terms and conditions of those plans and programs.

You will be covered by the Company's director's and officer's liability insurance as in effect from time to time in the same manner as other members of the Company's senior management team.

In addition, you will be eligible to participate in the Sunesis Pharmaceuticals Bonus Program, with a target annual bonus of 40% of your annual salary, subject to the terms and conditions of the Bonus Program. You are also eligible for long-term incentive awards in the same manner as such awards are made to members of the Company's senior management team.

We understand that you expect to commute to the Bay Area for the first eighteen (18) months of your employment. During this time (up to eighteen months), the Company will pay for your transportation and lodging expenses. Insofar as these amounts are taxable, the Company will gross-up the payments to you to cover any applicable taxes so that you arc not out-of-pocket for any taxes associated with such expense payments.

To assist in your relocation from New Jersey to the San Francisco Bay Area, the Company will make a lump-sum payment to you in an amount equal to $10,000.00 (less applicable taxes and withholdings). This amount will be paid to you upon receiving your first paycheck at Sunesis.

After the Company positively unblinds the VALOR Study, you will be eligible for additional relocation assistance, up to a maximum amount of $250,000 which shall include any gross-up payments to you to cover any applicable taxes, so that you are not out-of-pocket for any taxes associated with such additional relocation payments, as follows:

- Home Sale Assistance through the Buyer Value Option Program (BVO)
- Home Purchase Assistance capped at 3% of the new home purchase amount
- Full Service Household Goods shipping to include packing, shipping and valuation up to $75,000
- Storage of Household Goods up to 60 days if needed
- Shipping of up to three (3) autos
- Rental car at destination during auto shipping
- Up to 2 home finding trips for spouse and daughter and son (including airfare and rental car)
- Final move expense for family of four

Upon your written acceptance of this offer, a representative from Global Mobility Solutions will contact you to discuss your specific relocation needs and to review the details of your relocation package. All moving expenses should be itemized on a separate expense report form with receipts attached. Expenses should be submitted within sixty (60) days after they are incurred.

We agree to enter into the following agreements with you on or prior to your first day of employment: an Executive Severance Benefits Agreement and an Indemnification Agreement, in the forms attached as Exhibit A and B, respectively. As a condition of employment, you agree to comply with all of our Policies and Procedures and sign a Confidential Information and invention Assignment Agreement with the Company. On your first day of employment, please plan to meet with a representative of Human Resources for new employee orientation.

In addition to any benefits, rights and compensation that you are entitled to under the Executive Severance Benefits Agreement or otherwise under this letter, in the event of your “Covered Termination” (as defined in the Executive Severance Benefits Agreement) during 2014, you will be entitled to (A) an additional three (3) months of your Base Salary paid in cash in a single lump sum on the 60th day following your “Separation from Service” (as defined in the Executive Severance Benefits Agreement) and (B) consistent with the related “COBRA Payments” provisions of the Executive Severance Benefits Agreement, Company-paid (either directly to the

applicable health insurance carrier or to you in the form of a cash payment of equivalent value) continued group health plan family coverage in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985 for an additional three (3) months.

In accordance with federal law, your employment is contingent upon your presentation of evidence supporting your eligibility to be employed in the United States. Accordingly, we request that you provide us with originals of the appropriate documents for this purpose. A list of the documents deemed acceptable is included on the last page of the 1-9 Form, which is included in this letter. Please bring the completed I-9 form and appropriate documents with you to your new-hire orientation.

Your relationship with the Company will be at-will, which means that either the Company or you may terminate the relationship at any time, with or without cause and with or without advance notice. The at-will nature of your employment relationship means that the Company may change your position, duties, work location, compensation and benefits from time to time at its discretion. However, the parties understand and agree that upon a termination of your employment or change in the terms or conditions of your employment with the Company (as described above), you will be entitled to the benefits, rights and compensation provided under your Executive Severance Benefits Agreement (subject to the terms and conditions set forth therein), the terms of any Company employee benefit plan, program or arrangement for which you are eligible or otherwise covered by (subject to the terms and conditions set forth therein), or applicable law.

Notwithstanding anything in this letter or otherwise to the contrary, the parties hereto intend that all payments and benefits with respect to you under this letter or any other Company plan, program or arrangement shall, to the extent applicable, comply with the requirements of Section 409A of the Internal Revenue Code of 1986, as amended, and the regulations and other official pronouncements thereunder (collectively, “Section 409A”) and, accordingly, to the maximum extent possible, this letter and any such plans, programs and arrangements shall be interpreted and administered in a manner consistent therewith. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent possible, maintain the original intent and economic benefit. To the extent that reimbursement or in-kind benefits under this letter constitute nonqualified deferred compensation subject to Section 409A, (i) all such reimbursements and benefits shall be made on or prior to the last day of the calendar year following the calendar year in which such expenses were incurred, (ii) any right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit, and (iii) no expenses eligible for reimbursement or in-kind benefits provided in any calendar year shall in any way affect the expenses eligible for reimbursement or in-kind benefits provided in any other calendar year.

This letter, together with your Confidential Information Agreement, Executive Severance Benefits Agreement, and Indemnification Agreement, form the complete and exclusive statement of your agreement with the Company concerning the subject matter hereof. The terms in this letter supersede any other representations or agreements heretofore made to you by any party,

whether oral or written. The terms of this letter cannot be changed (except with respect to those changes expressly reserved to the Company's discretion in this letter) without a written agreement signed by you and a duly authorized officer of the Company. This agreement is to be governed by the laws of the state of California.

Joe, we are all very excited about having you join the Sunesis team and would like you to start no later than February 24th, 2014. We believe you will be a key contributor to Sunesis' future success. To accept our offer under the terms described above, please sign and date this letter, return it to me by Friday, January 17, 2011 and keep a copy for your files.

If you have any questions regarding this offer, please let me know.

Sincerely,

/s/ Daniel N. Swisher
Daniel N. Swisher, Jr.
Chief Executive Officer and President

I have read and accept this employment offer.

/s/ Joseph DePinto
Joseph DePinto

1/14/14
Date

Attachments (3):
Executive Severance Benefits Agreement
Indemnification Agreement
Form I-9

Exhibit 10.45

EXECUTIVE SEVERANCE BENEFITS AGREEMENT

This **EXECUTIVE SEVERANCE BENEFITS AGREEMENT** (the "***Agreement***") is entered into this 6th day of March, 2014 (the "***Effective Date***"), between **JOSEPH DEPINTO** ("***Executive***") and **SUNESIS PHARMACEUTICALS, INC.** This Agreement is intended to provide Executive with the compensation and benefits described herein upon the occurrence of specific events. Certain capitalized terms used in this Agreement are defined in Article 5.

ARTICLE 1

SCOPE OF AND CONSIDERATION FOR THIS AGREEMENT

1.1 Position and Duties. Executive shall be employed by the Company as its Chief Commercial Officer, subject to the terms and conditions set forth in Executive's offer letter from the Company. Executive reports directly to the Chief Executive Officer.

1.2 Restrictions. During his employment by the Company, Executive agrees to the best of his ability and experience that he will at all times loyally and conscientiously perform all of the duties and obligations required of and from him as Chief Commercial Officer. During the term of his employment, Executive further agrees that he will devote all of his business time and attention to the business of the Company, the Company will be entitled to all of the benefits and profits arising from or incident to all such work, services and advice, Executive will not render commercial or professional services of any nature to any person or organization, whether or not for compensation, without the prior written consent of the Board, and Executive will not directly or indirectly engage or participate in any business that is competitive in any manner with the business of the Company. Nothing in this Agreement will prevent Executive from accepting speaking or presentation engagements in exchange for honoraria or from service on boards of charitable organizations or otherwise participating in civic, charitable or fraternal organizations, or from owning no more than one percent (1%) of the outstanding equity securities of a corporation whose stock is listed on a national stock exchange.

1.3 Confidential Information and Invention Assignment Agreement. Executive acknowledges that he has executed and delivered to an officer of the Company the Company's Confidential Information and Invention Assignment Agreement (the "***Confidentiality Agreement***") and that the Confidentiality Agreement remains in full force and effect.

1.4 Benefits. The Company and Executive wish to set forth the compensation and benefits which Executive shall be entitled to receive in the event Executive's employment with the Company is terminated under the circumstances described herein.

1.5 Consideration. The duties and obligations of the Company to Executive under this Agreement shall be in consideration for Executive's employment with the Company and Executive's execution of a release in accordance with Section 3.1.

ARTICLE 2

CHANGE OF CONTROL BENEFITS & SEVERANCE BENEFITS

2.1 Severance Benefits. Subject to compliance with the terms and conditions of this Agreement, Executive will be eligible to receive the benefits set forth in this Section 2.1 upon a Covered Termination of Executive's employment.

(a) Base Salary. The Company shall pay to Executive an amount equal to nine (9) months' Base Salary. Such severance amount shall be paid in cash in a single lump sum on the 60th day following Executive's Separation from Service, subject to Sections 3.1 and 3.3 below, and shall be subject to all required tax withholding.

(b) COBRA Payments. If the Executive is participating in the Company's group health insurance plans on the date of Executive's Separation from Service, and timely elects to continue such coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985, or, if applicable, comparable state or local insurance laws ("COBRA"), then the Company will pay, directly to the COBRA carrier, as and when due, the COBRA premiums necessary to continue such health insurance coverage for the Executive and his eligible dependents ("COBRA Continuation Payments") until the earliest of: (i) the first 9 months of COBRA coverage following the Executive's Separation from Service, (ii) the expiration of eligibility for COBRA coverage, or (iii) the date when Executive or his dependents become eligible for substantially equivalent health insurance coverage in connection with new employment or self-employment (such period, the "COBRA Payment Period"). However, if at any time the Company determines, in its sole discretion, that the Company's payment of the COBRA Continuation Payments would result in a violation of the nondiscrimination rules of Section 105(h)(2) of the Code or any statute or regulation of similar effect (including but not limited to the 2010 Patient Protection and Affordable Care Act, as amended by the 2010 Health Care and Education Reconciliation Act) or otherwise result in a material penalty to the Company, then in lieu of providing the COBRA Continuation Payments for the remainder of the COBRA Payment Period, the Company will instead pay the Executive, on the first day of each month of the remainder of the COBRA Payment Period, a fully taxable cash payment equal to the COBRA Continuation Payments for that month, subject to applicable tax withholdings. If the Executive becomes eligible for coverage under another employer's group health plan or otherwise ceases to be eligible for COBRA during the COBRA Payment Period, the Executive must immediately notify the Company of such event, and all payments and obligations under this clause will immediately cease.

(c) Acceleration. The vesting and/or exercisability of the unvested shares subject to Executive's then-outstanding Stock Awards shall be automatically accelerated by twelve (12) months on Executive's Separation from Service.

2.2 Change of Control Acceleration. In the event of a Change of Control, the vesting and/or exercisability of fifty percent (50%) of Executive's then-outstanding and unvested Stock Awards shall be automatically accelerated immediately prior to the effective date of such Change of Control.

2.3 Change of Control Severance Benefits. In the event Executive suffers a Covered Termination on or within twelve (12) months following the effective date of a Change of Control, then in addition to the severance benefits set forth above in Section 2.1, the vesting and/or exercisability of each of Executive's then-outstanding Stock Awards shall be automatically accelerated on Executive's Separation from Service as to all of the unvested shares subject to Executive's then outstanding Stock Awards.

2.4 Other Terminations. If Executive's employment is terminated by the Company for Cause, by Executive other than pursuant to a Constructive Termination, or as a result of Executive's death or disability, the Company shall not have any other or further obligations to Executive under this Agreement (including any financial obligations) except that Executive shall be entitled to receive (a) Executive's fully earned but unpaid base salary, through the date of termination at the rate then in effect, and (b) all other amounts or benefits to which Executive is entitled under any compensation, retirement or benefit plan or practice of the Company at the time of termination in accordance with the terms of such plans or practices, including, without limitation, any eligibility for continuation of benefits required by COBRA. In addition, subject to the provisions of the Company's equity compensation plans and the terms of Executive's Stock Awards, if Executive's employment is terminated by the Company for Cause, by Executive other than pursuant to a Constructive Termination, or as a result of Executive's death or disability, all vesting of Executive's unvested Stock Awards previously granted to him by the Company shall cease as of the date of termination and none of such unvested Stock Awards shall be exercisable following the date of such termination. The foregoing shall be in addition to, and not in lieu of, any and all other rights and remedies which may be available to the Company under the circumstances, whether at law or in equity.

2.5 Mitigation. Except as otherwise specifically provided herein, Executive shall not be required to mitigate damages or the amount of any payment provided under this Agreement by seeking other employment or otherwise, nor shall the amount of any payment provided for under this Agreement be reduced by any compensation earned by Executive as a result of employment by another employer or by any retirement benefits received by Executive after the date of the Covered Termination.

2.6 Exclusive Remedy. Except as otherwise expressly required by law (e.g., COBRA) or as specifically provided herein, all of Executive's rights to salary, severance, benefits, bonuses and other amounts hereunder (if any) accruing after the termination of Executive's employment shall cease upon such termination. In the event of a termination of Executive's employment with the Company, Executive's sole remedy shall be to receive the payments and benefits described in this Agreement.

ARTICLE 3

LIMITATIONS AND CONDITIONS UPON BENEFITS

3.1 Conditions to Benefits. All of the payments, benefits and rights of the Executive under this Agreement are subject to and contingent upon: (a) the Executive's execution, delivery and non-revocation of an effective release of all claims against the Company and its affiliates substantially in the form attached hereto as Exhibit A or Exhibit B, as applicable (the "Release") as of a date not later than the 60th day following the Executive's Separation from Service, (b) the Executive's resignation from all positions the Executive holds with the Company and its affiliates as of the date of the Separation from Service (or such other date requested or permitted by the Board), and (c) the Executive's continued compliance with all of the Executive's obligations to the Company and its affiliates, including but not limited to obligations under this Agreement and the Confidentiality Agreement.

3.2 Termination of Benefits. Benefits under this Agreement shall terminate immediately if the Executive, at any time, violates any proprietary information or confidentiality obligation to the Company, including, without limitation, the Confidentiality Agreement.

3.3 Section 409A. It is intended that all of the benefits provided under the Agreement satisfy, to the greatest extent possible, the exemptions from the application of Section 409A of the Code and the regulations and other guidance thereunder and any state law of similar effect (collectively, "Section 409A") provided under Treasury Regulations Sections 1.409A-1(b)(4), 1.409A-1(b)(5) and 1.409A-1(b)(9), and the Agreement will be construed to the greatest extent possible as consistent with those provisions. To the extent not so exempt, the Agreement (and any definitions under the Agreement) will be construed in a manner that complies with Section 409A, and incorporates by reference all required definitions and payment terms. For purposes of Section 409A (including, without limitation, for purposes of Treasury Regulations Section 1.409A-2(b)(2)(iii)), the Executive's right to receive any installment payments under the Agreement will be treated as a right to receive a series of separate payments and, accordingly, each installment payment under the Agreement will at all times be considered a separate and distinct payment. If the Board determines that any of the payments in connection with a Separation from Service constitute "deferred compensation" under Section 409A, and if the Executive is a "specified employee" of the Company, as such term is defined in Section 409A(a)(2)(B)(i), at the time of his Separation from Service, then, solely to the extent necessary to avoid the incurrence of the adverse personal tax consequences under Section 409A, the timing of the payments due on a Separation from Service will be delayed as follows: on the earlier to occur of (i) the date that is six months and one day after the effective date of the Executive's Separation from Service, and (ii) the date of the Executive's death (such earlier date, the "Delayed Initial Payment Date"), the Company will (A) pay to the Executive a lump sum amount equal to the sum of the payments that the Executive would otherwise have received through the Delayed Initial Payment Date if the commencement of the payments had not been delayed pursuant to this paragraph, and (B) commence paying the balance of the payments in accordance with the applicable payment schedules set forth in above. No interest will be due on any amounts so deferred.

ARTICLE 4

PARACHUTE PAYMENTS

4.1 Section 280 - Best After Tax. If any payment or benefit the Executive would receive from the Company or otherwise in connection with a change of control of the Company (a "Payment") would (a) constitute a "parachute payment" within the meaning of Section 280G of the Code, and, (b) but for this sentence, be subject to the Excise Tax, then such Payment will be equal to the Reduced Amount. The "Reduced Amount" will be either (x) the largest portion of the Payment that would result in no portion of the Payment being subject to the Excise Tax, or (y) the largest portion, up to and including the total, of the Payment, whichever amount, after taking into account all applicable federal, state, provincial, foreign and local employment taxes, income taxes, and the Excise Tax (all computed at the highest applicable marginal rate), results in the Executive's receipt, on an after-tax basis, of the greatest economic benefit (as determined in accordance with the cancellation/reduction order below) notwithstanding that all or some portion of the Payment may be subject to the Excise Tax. If a reduction in payments or benefits constituting "parachute payments" is necessary so that the Payment equals the Reduced Amount, reduction will occur in the following order: (1) reduction of cash payments; (2) cancellation of accelerated vesting of stock awards other than stock options (in the reverse order of the date of grant); (3) cancellation of accelerated vesting of stock options (in reverse order of exercise price, that is, cancelling the highest priced options first); and (4) reduction of other benefits paid to the Executive. Within any such category of Payments (that is, (1), (2), (3) or (4)), a reduction will occur first with respect to amounts that are not "deferred compensation" within the meaning of Section 409A of the Code and then with respect to amounts that are. The Executive has no rights to receive any Excise Tax gross up on any Payments.

ARTICLE 5

DEFINITIONS

For purposes of the Agreement, the following terms are defined as follows:

5.1 *"Base Salary"* means Executive's annual base salary as in effect during the last regularly scheduled payroll period immediately preceding the Covered Termination (or, in the case of a Covered Termination arising from Constructive Termination, the annual base salary as in effect immediately prior to the event that gives rise to a right to resign as a Constructive Termination).

5.2 *"Board"* means the Board of Directors of the Company.

5.3 *"Cause"* means that, in the reasonable determination of the Company, Executive:

(a) has committed an act of fraud or embezzlement or has intentionally committed some other illegal act that has a material adverse impact on the Company or any successor or parent or subsidiary thereof;

(b) has been convicted of, or entered a plea of "guilty" or "no contest" to, a felony which causes or may reasonably be expected to cause substantial economic injury to or substantial injury to the reputation of the Company or any subsidiary or affiliate of the Company;

(c) has made any unauthorized use or disclosure of confidential information or trade secrets of the Company or any successor or parent or subsidiary thereof that has a material adverse impact on any such entity;

(d) has committed any other intentional misconduct that has a material adverse impact on the Company or any successor or parent or subsidiary thereof, or

(e) has intentionally refused or intentionally failed to act in accordance with any lawful and proper direction or order of the Board; provided such direction is not materially inconsistent with the Executive's customary duties and responsibilities.

5.4 *"Change of Control"* means and includes each of the following:

(a) the acquisition, directly or indirectly, by any "person" or "group" (as those terms are defined in Sections 3(a)(9), 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended, and the rules thereunder) of "beneficial ownership" (as determined pursuant to Rule 13d-3 under the Securities Exchange Act of 1934, as amended) of securities entitled to vote generally in the election of directors (***"voting securities***") of the Company that represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities, other than:

(i) an acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company, or

(ii) an acquisition of voting securities by the Company or a corporation owned, directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company;

Notwithstanding the foregoing, the following event shall not constitute an "acquisition" by any person or group for purposes of this Section: an acquisition of the Company's securities by the Company that causes the Company's voting securities beneficially owned by a person or group to represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities; *provided, however,* that if a person or group shall become the beneficial owner of fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change of Control; or

(b) the consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the ***"Successor Entity"***) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(ii) after which no person or group beneficially owns voting securities representing fifty percent (50%) or more of the combined voting power of the Successor Entity; *provided, however,* that no person or group shall be treated for purposes of this clause (ii) as beneficially owning fifty percent (50%) or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(c) the Company's stockholders approve a liquidation or dissolution of the Company.

Notwithstanding the foregoing, a transaction shall not constitute a Change of Control if: (i) it constitutes the Company's public offering of its securities; or (ii) it is a transaction effected primarily for the purpose of financing the Company with cash (as determined by the Board in its discretion and without regard to whether such transaction is effectuated by a merger, equity financing or otherwise). The Board shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change of Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change of Control and any incidental matters relating thereto.

5.5 ***"Code***" means the Internal Revenue Code of 1986, as amended from time to time and the Treasury Regulations thereunder.

5.6 ***"Company"*** means Sunesis Pharmaceuticals, Inc. or, following a Change of Control, the surviving entity resulting from such transaction.

5.7 ***"Constructive Termination"*** means that Executive voluntarily terminates employment with the Company (or any successor thereto) if and only if:

(a) one of the following actions have been taken without Executive's express written consent:

(i) there is a material diminution in the authority, duties or responsibilities of Executive, or the assignment to Executive of duties that are materially inconsistent with and materially adverse to Executive's position;

(ii) a change in the Executive's direct reporting relationship so that Executive no longer reports directly to the Chief Executive Officer;

(iii) there is a material reduction in Executive's Base Salary, unless the base salaries of all other executives are similarly reduced;

(iv) Executive is required to relocate Executive's principal place of employment to a facility or location that would increase Executive's one way commute distance by more than thirty (30) miles from such Executive's place of employment immediately prior to such change;

(v) the Company materially breaches its obligations under this Agreement or any then-effective written employment agreement with Executive; or

(vi) any acquirer, successor or assignee of the Company materially fails to assume and perform, in all material respects, the obligations of the Company hereunder; and

(b) Executive provides written notice to the Company's Chief Executive Officer within the ninety (90)-day period immediately following such action; and

(c) such action is not remedied by the Company within thirty (30) days following the Company's receipt of such written notice; and

(d) Executive's resignation is effective not later than sixty (60) days after the expiration of such thirty (30) day cure period.

The termination of Executive's employment as a result of Executive's death or disability will not be deemed to be a Constructive Termination.

5.8 ***"Covered Termination"*** means an Involuntary Termination Without Cause or a Constructive Termination.

5.9 ***"Excise Tax"*** means the excise tax imposed by Section 4999 of the Code, together with any interest or penalties imposed with respect to such excise tax.

5.10 ***"Involuntary Termination Without Cause"*** means Executive's dismissal or discharge other than for Cause. The termination of Executive's employment as a result of Executive's death or disability will not be deemed to be an Involuntary Termination Without Cause.

5.11 A ***"Payment"*** shall mean any payment or distribution in the nature of compensation (within the meaning of Section 280G(b)(2) of the Code) to or for the benefit of the Executive, whether paid or payable pursuant to this Agreement or otherwise.

5.12 ***"Separation from Service"*** shall have the meaning set forth under Treasury Regulations Section 1.409A-1(h), without regard to any alternative definition thereunder.

5.13 "***Stock Awards***" means all stock options, restricted stock and such other awards granted pursuant to the Company's stock option and equity incentive award plans or agreements and any shares of stock issued upon exercise thereof, and any awards into which such awards are converted by reason of a Change of Control (e.g., by reason of assumption, substitution or conversion by the successor entity or acquiring corporation).

ARTICLE 6

GENERAL PROVISIONS

6.1 Employment Status. This Agreement does not constitute a contract of employment or impose upon Executive any obligation to remain as an employee, or impose on the Company any obligation (a) to retain Executive as an employee, (b) to change the status of Executive as an at-will employee, or (c) to change the Company's policies regarding termination of employment.

6.2 Notices. Any notices provided hereunder must be in writing, and such notices or any other written communication shall be deemed effective upon the earlier of personal delivery (including personal delivery by facsimile) or the third day after mailing by first class mail to the Company at its primary office location and to Executive at Executive's address as listed in the Company's payroll records. Any payments made by the Company to Executive under the terms of this Agreement shall be delivered to Executive either in person or at the address as listed in the Company's payroll records.

6.3 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or any other jurisdiction, but this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provisions had never been contained herein.

6.4 Waiver. If either party should waive any breach of any provisions of this Agreement, he or it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision of this Agreement.

6.5 Dispute Resolution. To ensure the timely and economical resolution of disputes that may arise in connection with Executive's employment with the Company, Executive and the Company agree that any and all disputes, claims, or causes of action arising from or relating to the enforcement, breach, performance, negotiation, execution, or interpretation of this Agreement, Executive's employment, or the termination of Executive's employment, including but not limited to statutory claims, shall be resolved to the fullest extent permitted by law by final, binding and confidential arbitration, by a single arbitrator, in San Francisco, California, conducted by JAMS, Inc. ("JAMS") under the then applicable JAMS rules. By agreeing to this arbitration procedure, both Executive and the Company waive the right to resolve any such dispute through a trial by jury or judge or administrative proceeding. The Company acknowledges that Executive will have the right to be represented by legal counsel at any arbitration proceeding. The arbitrator shall: (a) have the authority to compel adequate discovery

for the resolution of the dispute and to award such relief as would otherwise be permitted by law; and (b) issue a written arbitration decision, to include the arbitrator's essential findings and conclusions and a statement of the award. The arbitrator shall be authorized to award any or all remedies that Executive or the Company would be entitled to seek in a court of law. The Company shall pay all JAMS' arbitration fees in excess of the amount of court fees that would be required of the Executive if the dispute were decided in a court of law. Nothing in this Agreement is intended to prevent either Executive or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any such arbitration. Any awards or orders in such arbitrations may be entered and enforced as judgments in the federal and state courts of any competent jurisdiction.

6.6 Complete Agreement. This Agreement, including Exhibit A and Exhibit B, constitutes the entire agreement between Executive and the Company, and is the complete, final, and exclusive embodiment of their agreement with regard to severance benefits to Executive in the event of employment termination, wholly superseding all written and oral agreements with respect to severance benefits to Executive in the event of employment termination. It is entered into without reliance on any promise or representation other than those expressly contained herein. Notwithstanding anything herein to the contrary, this Agreement shall not supersede any indemnification agreement between Executive and the Company.

6.7 Amendment or Termination of Agreement. This Agreement may be changed or terminated only upon the mutual written consent of the Company and Executive. The written consent of the Company to a change or termination of this Agreement must be signed by an executive officer of the Company after such change or termination has been approved by the Board.

6.8 Counterparts. This Agreement may be executed in separate counterparts, any one of which need not contain signatures of more than one party, but all of which taken together will constitute one and the same Agreement.

6.9 Headings. The headings of the Articles and Sections hereof are inserted for convenience only and shall not be deemed to constitute a part hereof nor to affect the meaning thereof.

6.10 Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by Executive, and the Company, and any surviving entity resulting from a Change of Control and upon any other person who is a successor by merger, acquisition, consolidation or otherwise to the business formerly carried on by the Company, and their respective successors, assigns, heirs, executors and administrators, without regard to whether or not such person actively assumes any rights or duties hereunder; *provided, however,* that Executive may not assign any duties hereunder and may not assign any rights hereunder without the written consent of the Company, which consent shall not be withheld unreasonably.

6.11 Choice of Law. All questions concerning the construction, validity and interpretation of this Agreement will be governed by the law of the State of California, without regard to such state's conflict of laws rules.

6.12 Non-Publication. The parties mutually agree not to disclose publicly the terms of this Agreement except to the extent that disclosure is mandated by applicable law or regulation or to their respective advisors (*e.g.*, attorneys, accountants).

6.13 Construction of Agreement. In the event of a conflict between the text of the Agreement and any summary, description or other information regarding the Agreement, the text of the Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement on the Effective Date written above.

SUNESIS PHARMACEUTICALS, INC.	**JOSEPH DEPINTO**
By: /s/ Daniel N. Swisher, Jr.	/s/ Joseph DePinto
Name: Daniel N. Swisher, Jr.	
Title: CEO and President	

Exhibit A: Release (Individual Termination)
Exhibit B: Release (Group Termination)

EXHIBIT A

RELEASE
(INDIVIDUAL TERMINATION)

I understand that this Release, together with the Executive Severance Benefits Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company, affiliates of the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Executive Severance Benefits Agreement, which I have executed and of which this Release is a part.

1. Proprietary Information Obligations. I hereby confirm my obligations under my Confidentiality Agreement with the Company.

2. General Release. In exchange for severance benefits and other consideration provided to me by the Executive Severance Benefits Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "***Released Parties***") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release (collectively, the "***Released Claims***"). The Released Claims include, but are not limited to: (1) all claims arising out of or in any way related to my employment with the Company or its affiliates, or the termination of that employment; (2) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company or its affiliates; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), the federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended). Notwithstanding the foregoing, the following are not included in the Released Claims (the "***Excluded Claims***"): (1) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company to which I am a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (2) any claims for coverage under any Directors' and Officers' insurance policy maintained by the Company; and (3) any rights which are not waiveable as a matter of law. In addition, nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

3. ADEA Waiver. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA. I also acknowledge that the consideration given for the Released Claims is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) the Released Claims do not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (c) I have twenty-one (21) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an officer of the Company; and (e) the Release will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release ("***Effective Date***").

4. Section 1542 Waiver. I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims I may have against the Company.

5. Representations. I hereby represent that I have been paid all compensation owed and for all hours worked, I have received all the leave and leave benefits and protections for which I am eligible, and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

6. Non-Disparagement. I hereby agree not to disparage the Company, or its officers, directors, employees, shareholders or agents, in any manner likely to be harmful to its or their business, business reputation, or personal reputation; *provided, however,* that I will respond accurately and fully to any question, inquiry or request for information when required by legal process. The Company agrees to use its best efforts to prevent its employees, officers and directors from disparaging you.

I acknowledge that to become effective, I must sign and return this Release to the Company on or after _____, so that it is received not later than twenty-one (21) days following the date it is provided to me, and I must not revoke it thereafter.

JOSEPH DEPINTO

_____

Date: _____

EXHIBIT B

RELEASE
(GROUP TERMINATION)

I understand that this Release, together with the Executive Severance Benefits Agreement, constitutes the complete, final and exclusive embodiment of the entire agreement between the Company, affiliates of the Company and me with regard to the subject matter hereof. I am not relying on any promise or representation by the Company that is not expressly stated therein. Certain capitalized terms used in this Release are defined in the Executive Severance Benefits Agreement, which I have executed and of which this Release is a part.

1. Proprietary Information Obligations. I hereby confirm my obligations under my Confidentiality Agreement with the Company.

2. General Release. In exchange for Severance Benefits and other consideration provided to me by the Executive Severance Benefits Agreement that I am not otherwise entitled to receive, I hereby generally and completely release the Company and its current and former directors, officers, employees, stockholders, shareholders, partners, agents, attorneys, predecessors, successors, parent and subsidiary entities, insurers, affiliates, and assigns (collectively, the "***Released Parties***") from any and all claims, liabilities and obligations, both known and unknown, that arise out of or are in any way related to events, acts, conduct, or omissions occurring prior to my signing this Release (collectively, the "***Released Claims***"). The Released Claims include, but are not limited to: (1) all claims arising out of or in any way related to my employment with the Company or its affiliates, or the termination of that employment; (2) all claims related to my compensation or benefits, including salary, bonuses, commissions, vacation pay, expense reimbursements, severance pay, fringe benefits, stock, stock options, or any other ownership interests in the Company or its affiliates; (3) all claims for breach of contract, wrongful termination, and breach of the implied covenant of good faith and fair dealing; (4) all tort claims, including claims for fraud, defamation, emotional distress, and discharge in violation of public policy; and (5) all federal, state, and local statutory claims, including claims for discrimination, harassment, retaliation, attorneys' fees, or other claims arising under the federal Civil Rights Act of 1964 (as amended), the federal Americans with Disabilities Act of 1990, the federal Age Discrimination in Employment Act of 1967 (as amended) ("***ADEA***"), the federal Employee Retirement Income Security Act of 1974 (as amended), and the California Fair Employment and Housing Act (as amended). Notwithstanding the foregoing, the following are not included in the Released Claims (the "***Excluded Claims***"): (1) any rights or claims for indemnification I may have pursuant to any written indemnification agreement with the Company to which I am a party, the charter, bylaws, or operating agreements of the Company, or under applicable law; (2) any claims for coverage under any Directors' and Officers' insurance policy maintained by the Company; and (3) any rights which are not waiveable as a matter of law. In addition, nothing in this Release prevents me from filing, cooperating with, or participating in any proceeding before the Equal Employment Opportunity

Commission, the Department of Labor, or the California Department of Fair Employment and Housing, except that I hereby waive my right to any monetary benefits in connection with any such claim, charge or proceeding. I hereby represent and warrant that, other than the Excluded Claims, I am not aware of any claims I have or might have against any of the Released Parties that are not included in the Released Claims.

3. ADEA Waiver. I acknowledge that I am knowingly and voluntarily waiving and releasing any rights I may have under the ADEA. I also acknowledge that the consideration given for the Released Claims is in addition to anything of value to which I was already entitled. I further acknowledge that I have been advised by this writing, as required by the ADEA, that: (a) the Released Claims do not apply to any rights or claims that arise after the date I sign this Release; (b) I should consult with an attorney prior to signing this Release (although I may choose voluntarily not to do so); (c) I have forty-five (45) days to consider this Release (although I may choose to voluntarily sign it sooner); (d) I have seven (7) days following the date I sign this Release to revoke the Release by providing written notice to an officer of the Company; and (e) the Release will not be effective until the date upon which the revocation period has expired unexercised, which will be the eighth day after I sign this Release ("***Effective Date***"). I have received with this Release all of the information required by the ADEA, including without limitation a detailed list of the job titles and ages of all employees who were terminated in this group termination and the ages of all employees of the Company in the same job classification or organizational unit who were not terminated, along with information on the eligibility factors used to select employees for the group termination and any time limits applicable to this group termination program.

4. Section 1542 Waiver. I acknowledge that I have read and understand Section 1542 of the California Civil Code which reads as follows: **"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."** I hereby expressly waive and relinquish all rights and benefits under that section and any law of any jurisdiction of similar effect with respect to my release of any claims I may have against the Company.

5. Representations. I hereby represent that I have been paid all compensation owed and for all hours worked, I have received all the leave and leave benefits and protections for which I am eligible, and I have not suffered any on-the-job injury for which I have not already filed a workers' compensation claim.

6. Non-Disparagement. I hereby agree not to disparage the Company, or its officers, directors, employees, shareholders or agents, in any manner likely to be harmful to its or their business, business reputation, or personal reputation; *provided, however,* that I will respond accurately and fully to any question, inquiry or request for information when required by legal process. The Company agrees to use its best efforts to prevent its employees, officers and directors from disparaging you.

I acknowledge that to become effective, I must sign and return this Release to the Company on or after _____, so that it is received not later than forty-five (45) days following the date it is provided to me, and I must not revoke it thereafter.

JOSEPH DEPINTO

_____

Date: _____

{ * } = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, IS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

THE NOTATION "[RESERVED]" IS ORIGINAL, IS CURRENTLY IN THE DOCUMENT AND DOES NOT REFLECT INFORMATION REDACTED PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

EXHIBIT 10.46

SECOND AMENDED AND RESTATED COLLABORATION AGREEMENT

This COLLABORATION AGREEMENT (this "Agreement"), effective as of December 16, 2013 (the "Effective Date"), is made by and between Sunesis Pharmaceuticals, Inc., a Delaware corporation, having a principal place of business at 341 Oyster Point Boulevard, South San Francisco, CA 94080 ("Sunesis"), and Biogen Idec MA Inc., a Massachusetts corporation, having a principal place of business at 14 Cambridge Center, Cambridge, MA ("Biogen Idec"). Sunesis and Biogen Idec are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

BACKGROUND

A. Sunesis has developed proprietary technology and know-how for the discovery and optimization of small molecules that bind to enzyme targets and protein-protein interfaces, with special expertise towards kinases;

B. Biogen Idec engages in the research, development and commercialization of pharmaceutical compounds;

C. Sunesis and Biogen Idec are parties to that certain Collaboration Agreement, dated August 27, 2004 (the "OCA" and August 27, 2004, the "OCA Effective Date") pursuant to which, (i) the Parties agreed to collaborate to discover and develop small molecules that modulate certain Targets, including the BTK Target, with the goal of delivering compounds with desired activity and selectivity; (ii) Biogen Idec agreed to acquire exclusive licenses under the Collaboration Technology to develop and commercialize Target Selective Compounds in the Field resulting from the collaboration, as well as certain other rights to the results of the collaboration (the "Non-exclusive License Rights"), and Sunesis agreed to grant to Biogen Idec such licenses, all on the terms and conditions of the OCA; and (iii) Biogen Idec has assigned and exclusively licensed to Millennium Pharmaceuticals, Inc. ("Millennium") small molecules that modulate two Targets, Raf and PDK (each of which were Collaboration Targets under the OCA), such assignment the subject of a separate consent and agreement entered into by and between Millennium and Sunesis pursuant to an agreement of even date herewith (the "Millennium-Sunesis-Biogen Idec Agreement") together with an Asset Transfer Agreement entered into by and between Biogen Idec and Millennium of even date herewith;

D. In consideration for prepayment of certain milestones under the OCA and a payment from Millennium to Sunesis upon entry into that certain Amended and Restated Collaboration Agreement, dated as of March 31, 2011 (the "ARCA" and March 31, 2011, the "ARCA Effective Date") the Parties agreed to continue their collaboration solely with respect to the BTK Target and the Non-exclusive License Rights solely and entirely under the terms of the ARCA;

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

E. Under the terms of the ARCA, Biogen Idec has synthesized the BTK inhibitor known as BIIB062; and

F. The Parties now wish to amend and restate the ARCA to allow Sunesis to develop, manufacture and commercialize BIIB062 in the Oncology Field pursuant to an exclusive license to all of Biogen Idec's rights, title and interest in BIIB062 under the BIIB062 Technology and to otherwise continue their collaboration under the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter set forth, it is agreed by and between the Parties as follows:

ARTICLE 1
DEFINITIONS

As used herein, the following terms will have the meanings set forth below:

1.1. "Active Compound" shall mean a soluble chemical compound that can bind non-covalently to the Collaboration Target or a Target for which such compound is counterscreened, in each case where such compound { * }.

1.2. "Affiliate" of a Party shall mean any corporation or other business entity which during the Term of this Agreement Controls, is Controlled by or is under common Control with such Party but only for so long as such entity Controls, is Controlled by, or is under common control with such Party. With respect to a particular entity, "Control" shall mean the ownership directly or indirectly of fifty percent (50%) or more of the stock entitled to vote for the election of directors, and for nonstock organizations, of the equity interests entitled to control the management of such entity.

1.3. "{ * } Target" shall mean the human { * } protein kinase together with the { * } protein family members { * }-A, { * }-B, and { * }-C.

1.4. "{ * }" shall mean that certain BTK inhibitor known as { * } and having the chemical name { * }.

1.5. "BIIB062" shall mean that certain BTK inhibitor known as BIIB062 and having the chemical name { * }.

1.6. "BIIB062 Patents" shall mean all patents, patent applications and invention disclosures the subject of which is an invention that (i) was conceived and reduced to practice jointly, or under authority of, both Parties after August 25, 2004, but prior to June 30, 2011 in the course of activities directed to the discovery, research, or development of the Collaboration Derivative identified as BIIB062 that specifically covers BIIB062 or (ii) claims or covers an invention or was practiced by either Party, their Affiliates or Sublicensees in the development, manufacture or commercialization of BIIB062 or a BIIB062 Product. It is to be understood that BIIB062 Patents shall include any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any such patent applications or patents, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing to the extent consistent with parts (i) or (ii) of this Section 1.6. The BIIB062 Patents as of the Effective Date of this Agreement are set forth in Exhibit 1.6.

1.7. "BIIB062 Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for use in the Oncology Field that incorporates BIIB062 as an active drug substance.

1.8. "BIIB062 Technology" shall mean (i) Biogen Idec Collaboration Technology and (ii) Biogen Idec's interest in the Joint Collaboration Technology, but in each case, solely to the extent (i) and (ii) are necessary or useful for the development, manufacture and commercialization of BIIB062 or BIIB062 Product in the Oncology Field.

1.9. "BIIB062 Terms" shall mean all provisions of this Agreement which expressly, or otherwise by their terms, relate to the manufacture, development and commercialization of BIIB062 or the Parties' rights and obligations with respect thereto, but only to the extent that such provisions relate thereto, including but not limited to, Sections 3.4, 3.5.2, 3.6, 4.6, 6.4, 6.5, 6.8, 7.4.1, 7.4.2, 7.4.3, 7.4.4, 7.5.3(c), 7.6.3, 7.7, ARTICLE 8, Section 9.5 and ARTICLES 10 through 16.

1.10. "Biogen Idec Collaboration Know-How" shall mean any Know-How: (i) made or developed solely by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term; or (ii) made or developed solely by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates after August 25, 2004, but prior to June 30, 2011 in the course of activities specifically related to the discovery, research, or development of Collaboration Derivatives and BIIB062. Notwithstanding the foregoing, Biogen Idec Collaboration Know-How shall in all cases exclude Sunesis Core Technology, Joint Collaboration Know-How and Excluded Compounds.

1.11. "Biogen Idec Collaboration Patents" shall mean all patents, patent applications and invention disclosures the subject of which is an invention that was: (i) conceived in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term and is reduced to practice prior to the ARCA Effective Date solely by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates; or (ii) conceived and reduced to practice solely by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates after August 25, 2004, but prior to June 30, 2011 in the course of activities directed to the discovery, research, or development of Collaboration Compounds. It is to be understood that Biogen Idec Collaboration Patents shall include any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any of the patent applications or patents in (i) or (ii) above, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing. Notwithstanding the foregoing, Biogen Idec Collaboration Patents shall in all cases exclude Sunesis Core Technology and Joint Collaboration Patents.

1.12. "Biogen Idec Collaboration Technology" shall mean all Biogen Idec Collaboration Patents and Biogen Idec Collaboration Know-How.

1.13. "Biogen Idec Derivative" shall mean a chemical compound that is Synthesized solely by personnel of Biogen Idec or any of its Controlled Affiliates in the course of activities directed to a Target that is not then the Collaboration Target, where such chemical compound is not a Collaboration Derivative.

1.14. "BTK Target" shall mean the human protein Bruton's tyrosine kinase designated as the Collaboration Target by Biogen Idec under the OCA.

1.15. "Co-Funding Option" shall mean the option of Sunesis to fund a portion of the post Phase I Development Costs of a Product in the Co-Funded Territory as provided in Section 3.2. The "Co-Funded Territory" shall have the meaning set forth in Section 3.2.1

1.16. "Collaboration Compound" shall mean each compound that is: (i) a Synthesized Compound, (ii) a Collaboration Derivative Synthesized by or under authority of either Party or any of its Controlled Affiliates, after August 25, 2004, but prior to June 30, 2011, (iii) a Licensed Pre-Existing Compound, (iv) Covered by a Valid Claim of a Joint Collaboration Patent or a Sunesis Collaboration Patent, or (v) Covered by a Valid Claim of a patent within the Sunesis Core Technology as applied (A) to the Collaboration Target by or under authority of either Party or any of its Controlled Affiliates, or (B) to a Target other than the Collaboration Target by or under authority of Biogen Idec or any of its Controlled Affiliates. Notwithstanding the foregoing, BIIB062 shall not constitute a Collaboration Compound.

1.17. "Collaboration Derivative" shall mean a chemical compound Synthesized in the course of activities directed to a Target using as a starting point one or more: (i) Synthesized Compound(s); (ii) Licensed Pre-Existing Compound(s); (iii) compound(s) that are Covered by a Valid Claim of a Joint Collaboration Patent or Sunesis Collaboration Patent; (iv) compound(s) that are Covered by a Valid Claim of a patent within the Sunesis Core Technology as applied (A) to the Collaboration Target by or under authority of either Party or any of its Controlled Affiliates, or (B) to a Target other than a Collaboration Target by or under authority of Biogen Idec or any of its Controlled Affiliates; or (v) Kinase-Active Fragment(s).

1.18. "Collaboration Know-How" shall mean all Biogen Idec Collaboration Know-How, Sunesis Collaboration Know-How and Joint Collaboration Know-How.

1.19. "Collaboration Patents" shall mean all Biogen Idec Collaboration Patents, Sunesis Collaboration Patents and Joint Collaboration Patents.

1.20. "Collaboration Target" shall mean the BTK Target.

1.21. "Collaboration Technology" shall mean all Collaboration Patents and Collaboration Know-How.

1.22. "Combination Product" shall mean any of (i) a Product that incorporates two or more active drug substances including a Target Selective Compound, (ii) a Sunesis Product that incorporates two or more active drug substances including an Other Compound, or (iii) an Other Biogen Idec Product that incorporates two or more active drug substances including an Other Compound; in each case where at least one of the active drug substances is neither a Target Selective Compound, nor an Other Compound (respectively).

1.23. "Commercially Reasonable and Diligent Efforts" shall mean { * }.

1.24. "Confidential Information" shall mean, with respect to a Party, all information (and all tangible and intangible embodiments thereof), which is owned or controlled by such Party, and (x) was disclosed by such Party to the other Party as confidential information pursuant to the OCA or ARCA or (y) is disclosed by such Party to the other Party pursuant to this Agreement. Notwithstanding the foregoing, Confidential Information of a Party shall not include information which, and only to the extent, the receiving Party can establish by written documentation (a) has been generally known prior to disclosure of such information by the disclosing Party to the receiving Party; (b) has become generally known, without the fault of the receiving Party, subsequent to disclosure of such information by the disclosing Party to the receiving Party; (c) has been received by the receiving Party at any time from a source, other than the disclosing Party, rightfully having possession of and the right to disclose such information free of confidentiality obligations; (d) has been otherwise known by the receiving Party free of confidentiality obligations prior to disclosure of such information by the disclosing Party to the receiving Party; or (e) is independently developed without reference to or use of the Confidential Information of the disclosing Party. For clarity, except as otherwise expressly provided in this Agreement, Sunesis Collaboration Technology, Joint Collaboration Technology and the Licensed Pre-Existing Technology shall be deemed Confidential Information of both Biogen Idec and Sunesis. For clarity, Biogen Idec Collaboration Technology shall be deemed Confidential Information solely of Biogen Idec.

1.25. "Covered" shall mean, with respect to a compound and a Valid Claim, that the manufacture, use, sale, offer for sale or importation of such compound, but for the licenses or ownership rights granted herein, would infringe such Valid Claim.

1.26. "Development" shall mean all research and pre-approval development and regulatory activities regarding the Product. "Development" shall include, without limitation, all pre-approval activities related to research, optimization and design of the appropriate molecule and identification of back-ups, preclinical testing, test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, qualification and validation, quality assurance/quality control, clinical studies, manufacturing clinical supplies, regulatory affairs, statistical analysis and report writing, technology transfer, market research and development, and all other pre-approval activities. When used as a verb, "Develop" shall mean to engage in Development.

1.27. "Development Candidate" shall mean a Collaboration Compound designated by Biogen Idec as a Development Candidate in accordance with Section 2.6.

1.28. "Development Costs" shall mean the costs and expenses associated with Development activities actually incurred by the Parties or their Affiliates for a particular Product during the measurement period and in the territories described in Section 3.2.4(d). The costs and expenses associated with Development activities shall include, { * }. In determining "Development Costs" chargeable under this Agreement, each Party will use its respective project accounting systems, and will review and approve its project accounting systems and methodologies with the other Party. The Parties hereby agree that efforts of the employees of a Party or its Affiliates in performing its activities hereunder shall be charged as Development

Costs at the FTE Rate. Notwithstanding anything in this Section 1.28 to the contrary, only those Development Costs that are contemplated by the Co-Development Plan and Budget or were otherwise approved by the JSC shall be chargeable by a Party as Development Costs. It is further understood that the activities of the following groups or functions shall not be chargeable as Development Costs: Corporate Administration, Human Resources, Legal, Business Development, Finance, Corporate Communication and Public Affairs. All payments made by a Party to a Third Party in connection with the performance of its activities under the Co-Development Plan and Budget shall be charged as Development Costs at such Party's actual out-of-pocket cost. Expenses incurred by a Party for equipment, materials and supplies utilized in performing its activities under the Co-Development Plan and Budget shall not be separately charged as Development Costs, except for those expenses incurred by a Party, with the prior written consent of the JSC as set forth in the Co-Development Plan and Budget, in the purchase or making of equipment, materials or supplies (other than common laboratory supplies, e.g., pipettes, test tubes, petri dishes, reagents, and the like) that are to be used exclusively in connection with the performance of such Party's activities under the Co-Development Plan and Budget (e.g., laboratory animals, placebo supplies, etc.), which expenses shall be charged as Developments Cost at such Party's actual out-of-pocket expense incurred in purchasing or making such equipment, materials or supplies.

1.29. "Diligence Summary" shall mean a summary of research, development and commercialization activities with respect to the Collaboration Target that (i) were performed by the reporting Party or its Third Party collaborators in the previous { * } period (or shorter period from the prior report or relevant Target designation, if applicable), and (ii) as of the date the Diligence Report, are planned in good faith for the following { * } period. For clarity, it is understood and acknowledged that in providing a Diligence Report, a Party shall not be required to disclose scientific results, specific research activities or the identity of any Third Party collaborator or potential collaborator, but shall at a minimum provide a summary of the total number of FTEs dedicated or planned to be dedicated to the Development and commercialization of Collaboration Compounds that are specifically directed at the Collaboration Target, and a summary of the functional allocation of such FTEs.

1.30. "Excluded Compounds" shall mean any compound, to the extent the same is: (i) disclosed in either Party's patents or patent applications as of August 25, 2004; (ii) in the possession of either Party as of August 25, 2004 (as reflected in the books and records of such Party); (iii) acquired by a Party from a Third Party after August 25, 2004 by way of a merger with, or acquisition of, such Third Party; or (iv) independently developed by a Party outside of performance of the OCA pursuant to the OCA Research Program without use of or access to any Collaboration Technology, or any Confidential Information of the other Party; in each of (i) through (iv) above, as evidenced by such Party's contemporaneous written records. Notwithstanding the foregoing, Excluded Compounds shall not include Licensed Pre-Existing Compounds. Further, both Parties agree that there are no Sunesis Excluded Compounds that are Target Selective against the BTK Target as of the Effective Date.

1.31. "Field" shall mean the treatment, prevention and/or diagnosis of disease in humans through modulation of the Collaboration Target. For the avoidance of doubt, the scope of the Field shall not extend to activities of the Parties with protein, peptide or nucleic acid therapeutics directed to biological targets. The term peptide therapeutics in the preceding sentence shall mean { * }.

1.32. "FTE" shall mean, with respect to a Party, the equivalent of the work time of a full-time scientist or a full-time project team leader over a twelve-month period (including normal vacations, sick days and holidays), equal to at least { * } ({ * }) weeks of work. In the case of less than a full-time person, the portion of an FTE year devoted to activities hereunder by such person shall be determined by dividing the number of days during any twelve-month period devoted by such person to activities hereunder by the total number of working days of such person's full-time scientist during such twelve-month period. "FTE Rate" for both Parties shall mean ${ * } per annum per FTE as of December 31, 2005 and thereafter, the FTE Rate will be adjusted by the Inflation Index. As used herein, "Inflation Index" shall mean the percentage increase in the Consumer Price Index for all Urban Consumers, as published by the U.S. Department of Labor, Bureau of Statistics, since the OCA Effective Date.

1.33. "Gross Sales" shall mean the gross amount invoiced by either Party or its Affiliates to Third Parties for sales of a Product or BIIB062 Product and the net royalty or other amounts received by either Party or any of its Affiliates in such country pursuant to licenses or other agreements with Third Parties with respect to sales of a Product or BIIB062 Product (as applicable).

1.34. "Joint Collaboration Know-How" shall mean any Know-How: (i) made or developed jointly by, or under authority of, both Parties in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term; (ii) made or developed jointly by, or under authority of, both Parties after August 25, 2004, but prior to June 30, 2011 in the course of activities specifically related to the discovery, research, or development of Collaboration Derivatives; (iii) that is a Synthesized Compound; or (iv) that is a Collaboration Derivative Synthesized by or under authority of either Party or any of its Controlled Affiliates, after August 25, 2004, but prior to June 30, 2011. Notwithstanding the foregoing, Joint Collaboration Know-How shall in all cases exclude Sunesis Core Technology, Excluded Compounds and Biogen Idec Derivatives.

In addition, notwithstanding anything in subsections (i) through (iv) of this Section 1.34, Joint Collaboration Know-How shall not include any Know-How that was not made or developed in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term.

1.35. "Joint Collaboration Patents" shall mean all patents, patent applications and invention disclosures the subject of which is an invention that is: (i) conceived in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term and is reduced to practice prior to the ARCA Effective Date jointly by, or under authority of, both Parties; (ii) conceived and reduced to practice jointly by, or under authority of, both Parties after August 25, 2004, but prior to June 30, 2011 in the course of activities directed to the discovery, research, or development of Collaboration Derivatives; (iii) conceived in the course of performing the OCA pursuant to the OCA Research Program during the OCA Research Term and reduced to practice prior to the ARCA Effective Date using Joint Collaboration Know-How, Sunesis Collaboration Know-How

or Sunesis Core Technology by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates; or (iv) conceived and reduced to practice using Joint Collaboration Know-How, Sunesis Collaboration Know-How or Sunesis Core Technology by or under authority of personnel of Biogen Idec or any of its Controlled Affiliates after August 25, 2004, but prior to June 30, 2011 in the course of activities directed to the discovery, research, or development of Collaboration Derivatives. It is to be understood that Joint Collaboration Patents shall include any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any of the patent applications or patents in (i), (ii), (iii) or (iv) above, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing. For clarity, the inventions described in subsections (iii) and (iv) above are limited to those inventions directed at or comprising compositions of matter that modulate Targets and/or methods of use thereof in modulating Targets. Notwithstanding the foregoing, Joint Collaboration Patents shall in all cases exclude Sunesis Core Technology.

1.36. "Joint Collaboration Technology" shall mean all Joint Collaboration Patents and Joint Collaboration Know-How.

1.37. "Kinase" shall mean a human enzyme, the primary biological function of which is to catalyze transfer of phosphate from adenosine triphosphate.

1.38. "Kinase-Active Fragment" shall mean a non-tethered intermediate compound of a tethered compound (as that term is described in U.S. Patent number 6,335,155 B1), where such tethered compound (i) is either (A) a compound that binds to the purine binding site of a Kinase, or (B) a compound that binds to the adaptive region of a Kinase; (ii) was actually made or used by either Party alone or by both Parties jointly during the OCA Research Term in the course of activities directed to a Target that was then a "Collaboration Target" (as defined in the OCA) in the performance of the OCA Research Program in accordance with the then-current OCA Research Plan; and (iii) exhibits structure activity relationships and specific binding to one or more Kinase. For clarity, "intermediate compound" as used in this Section 1.38 shall mean that portion of the tethered compound which does not contain the linking or tethering moiety.

1.39. "Know-How" shall mean any data, inventions, methods, proprietary information, processes, techniques, technology, or material (including biological or other materials).

1.40. "Licensed Pre-Existing Compounds" shall mean any compound that is (i) Target Selective against the Collaboration Target and (ii) in the possession of Sunesis or disclosed in a patent or patent application owned or controlled by Sunesis, in each case at any time after August 25, 2004, but prior to November 25, 2004. Notwithstanding anything else in this Section 1.40, Licensed Pre-Existing Compounds shall exclude in all cases any compound that is Target Selective against the { * } Target.

1.41. "Licensed Pre-Existing Know-How" shall mean any Know-How specifically related to Licensed Pre-Existing Compounds owned or controlled by Sunesis at any time after August 25, 2004, but prior to November 25, 2004.

1.42. "Licensed Pre-Existing Patents" shall mean any patent or patent application directed at or comprising compositions of matter that modulate the Collaboration Target and/or methods of use thereof in modulating the Collaboration Target owned or controlled by Sunesis at any time after August 25, 2004, but prior to November 25, 2004, as well as any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any of such patent applications or patents, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing.

1.43. "Licensed Pre-Existing Technology" shall mean all Licensed Pre-Existing Patents and Licensed Pre-Existing Know-How.

1.44. "Main Terms" shall mean all provisions of this Agreement other than the BIIB062 Terms.

1.45. "Major Market" shall mean Canada, France, Germany, Italy, Spain, Japan, the United Kingdom or the United States.

1.46. "NDA" shall mean a New Drug Application (or its equivalent), as defined in the U.S. Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or any corresponding or similar application, registration or certification in any jurisdiction for marketing authorization of a product.

1.47. "Net Sales" shall mean, with respect to a Product or BIIB062 Product, Gross Sales less the following deductions to the extent actually paid, granted or accrued:

(i) sales returns and allowances on the sales of a Product or BIIB062 Product (as applicable), including trade, quantity, prompt pay and cash discounts and any other adjustments, including those granted on account of price adjustments or billing errors;

(ii) credits or allowances given or made for rejection or return of, and for uncollectible amounts on, previously sold Product or BIIB062 Product (as applicable) or for rebates or retroactive price reductions (including Medicare, Medicaid, managed care and similar types of rebates and chargebacks);

(iii) to the extent not already deducted or excluded from the gross amount invoiced or subsequently recovered as a credit or refund, taxes, duties or other governmental charges levied on or measured by the billing amount for a Product or BIIB062 Product (as applicable), as adjusted for rebates and refunds, which, for the avoidance of doubt, shall not include any tax, duty, or other charge imposed on or measured by net income (however denominated), or any franchise taxes, branch profits taxes, or similar tax;

(iv) to the extent not already deducted or excluded from the gross amount invoiced or subsequently recovered as a credit or refund, customs or excise duties, sales tax, consumption tax, value added tax, and other taxes (except income taxes), as adjusted for rebates and refunds;

(v) pharmaceutical excise taxes (such as those imposed by the United States Patient Protection and Affordable Care Act of 2010 (Pub.L. No. 111-48) and other comparable laws) applicable to a Product or BIIB062 Product (as applicable);

(vi) charges for freight and insurance directly related to the distribution of a product, to the extent not already deducted or excluded from the gross amount invoiced or subsequently recovered as a credit or refund, for sales of a Product or BIIB062 Product (as applicable);

(vii) credits for allowances given or made for wastage replacement for a Product or BIIB062 Product (as applicable); and

(viii) wholesaler and distributor administration fees applicable to a Product or BIIB062 Product (as applicable).

In any event, all of the foregoing deductions shall be taken in accordance with United States Generally Accepted Accounting Principles applied consistently to all products sold by a Party (including the Product or BIIB062 Product (as applicable) with respect to which royalties shall be payable under this Agreement). For clarity, deductions taken shall be applied to all products (including the Product or BIIB062 Product (as applicable) with respect to which royalties shall be payable under this Agreement) of a Party such that any of the deductions shall not disproportionately burden the Product or BIIB062 Product (as applicable) with respect to which Net Sales are calculated. In any event, deductions shall be taken only once with respect to the foregoing items subject to deduction regardless of whether such deduction may be included in more than one deductible category (i.e., no double dipping).

If a sale, transfer or other disposition with respect to a Product or BIIB062 Product (as applicable) is made for consideration other than cash or is not at arm's length, then the Net Sales from such sale, transfer or other disposition shall be the arm's length fair market value thereof. For purposes of this Agreement, "sale" shall mean any transfer or other distribution or disposition, but shall not include transfers or other distributions or dispositions of product, at no charge, for pre-clinical, clinical or regulatory purposes or in connection with patient assistance programs or other charitable purposes or to physicians or hospitals for promotional purposes.

In the event that a Product or BIIB062 Product (as applicable) is sold in the form of a Combination Product, Net Sales for the Combination Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the fraction A/A+B where A is the average sale price of products containing BIIB062, the Target Selective Compound, or Other Compound as is contained in such Combination Product as the sole active drug substance when sold separately in finished form (an "Agreement Product"), and B is the average sales price of products containing only the other active ingredients when sold separately in finished form, in each case during the applicable royalty payment period in the country in which the sale of the Combination Product was made, or if sales of both types of products did not occur in such period, then in the most recent royalty payment period in which sales of both occurred. Where the Agreement Product is sold separately in finished form but the other ingredients are not, Net Sales for the Combination Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the ratio of the average per-unit sale price of the Agreement Product when sold separately in finished form to the average per-unit Net Sales of the Combination Product, in each case during the applicable royalty payment period in the country in which the sale of the Combination Product was made. Where the other active

ingredients are sold separately in finished form but the Agreement Product is not, Net Sales for the Combination Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the difference obtained by subtracting from one (1) the ratio of the average per-unit sale price of products containing only the other active ingredient when sold separately in finished form to the average per-unit Net Sales of the Combination Product, in each case during the applicable royalty reporting period in the country in which the sale of the Combination Product was made. In the event that such average sales price cannot be determined for either of the Agreement Product or for products containing only the other active ingredient included in the Combination Product, Net Sales for purposes of determining payments under this Agreement shall be determined by good faith negotiations between the Parties.

1.48. "Non-Kinase Other Biogen Idec Product" shall mean an Other Biogen Idec Product that does not contain any Other Compounds that are directed at a Kinase.

1.49. "OCA Research Plan" shall mean the plan of research agreed upon and executed by the Parties pursuant to the OCA.

1.50. "OCA Research Program" shall mean the activities undertaken by the Parties pursuant to the OCA and the OCA Research Plan, during the OCA Research Term

1.51. "OCA Research Term" shall mean the period commencing on August 25, 2004, and ending June 30, 2008.

1.52. "Oncology Field" shall mean the treatment, prevention and/or diagnosis of oncologic and malignant hematologic conditions in humans, including myelodysplastic syndrome and other myeloproliferative disorders.

1.53. "Other Biogen Idec Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for all uses in humans and/or animals, in which Biogen Idec or its Affiliates incorporates one or more Other Compound(s) as an active ingredient, and does not incorporate any Target Selective Compounds as an active ingredient. It is understood that Other Biogen Idec Products containing different active ingredient(s) (i.e. a different active ingredient or an additional active ingredient) or a different formulation shall be deemed different "Other Biogen Idec Products".

1.54. "Other Compound" shall mean a Collaboration Compound that is not Target Selective against the Collaboration Target or any Target designated pursuant to the OCA as a "Collaboration Target" as defined therein.

1.55. "PDK" shall mean the human Phosphoinositide-dependent kinase-1 protein.

1.56. "Phase I" shall mean human clinical trials, the principal purpose of which is the preliminary evaluation of safety in healthy individuals as more fully defined in 21 C.F.R. §312.21(a) or similar clinical study in a country other than the United States. An initial study in patients where the primary purpose is the preliminary evaluation of safety will be considered a Phase I study.

1.57. "Phase II" shall mean human clinical trials conducted on a limited number of patients for the primary purpose of evaluation of both clinical efficacy and safety, and/or to obtain a preliminary evaluation of the dosage regimen, as more fully defined in 21 C.F.R. §312.21(b).

1.58. "Phase III" shall mean human clinical trials, the principal purpose of which is to establish substantial evidence of both safety and efficacy in patients with the disease or condition being studied, as more fully defined in 21 C.F.R. §312.21(c) or similar clinical study in a country other than the United States. Phase III shall also include any other human clinical trial intended to serve as a pivotal trial to support the submission of an application for regulatory approval.

1.59. "Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for all uses in humans and/or animals, which incorporates one or more Target Selective Compound, or any salt, ester, stereoisomer or polymorph thereof, as an active drug substance. It is understood that Products containing different active ingredient(s) (i.e. a different active ingredient or an additional active ingredient) or a different formulation shall be deemed different "Products". For the sake of clarity, "Product" shall not include any BIIB062 Product.

1.60. "Prosecution", "Prosecuting", and "Prosecute" shall mean the preparation, filing, prosecution and maintenance of any patent applications and patents, including, without limitation, any and all divisionals, continuations in part, extensions, interferences, re-examinations, reissues, oppositions, post-grant proceedings and the like.

1.61. "Raf" shall mean the human Raf protein kinase together with the Raf protein family members { * }.

1.62. "Regulatory Approval" shall mean approval of the health regulatory agency in a country (FDA in the U.S. and comparable authority outside the U.S.) necessary for the marketing and sale of a product in the applicable country. As used herein, "Regulatory Approval" shall not include pricing or reimbursement approval.

1.63. "Sublicensee" shall mean a Third Party expressly licensed by a Party to make, use, import, offer for sale or sell Product, Sunesis Product, BIIB062 Product, BIIB062 Reverted Product or Other Biogen Idec Product, as applicable. The term "Sublicensee" shall not include distributors (i.e. a Third Party who purchases product from a Party for resale).

1.64. "Sunesis Collaboration Know-How" shall mean any Know-How: (i) made or developed solely by or under authority of personnel of Sunesis or any of its Controlled Affiliates in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term; or (ii) made or developed solely by or under authority of personnel of Sunesis or any of its Controlled Affiliates after August 25, 2004, but prior to June 30, 2011 in the course of activities specifically related to the discovery, research, or development of Collaboration Derivatives. Notwithstanding the foregoing, Sunesis Collaboration Know-How shall in all cases exclude Sunesis Core Technology, Joint Collaboration Know-How and Excluded Compounds.

1.65. "Sunesis Collaboration Patents" shall mean all patents, patent applications and invention disclosures the subject of which is an invention that is: (i) conceived in the course of performing activities directed to the Collaboration Target pursuant to the OCA under the OCA Research Program during the OCA Research Term and is reduced to practice prior to the ARCA Effective Date solely by or under authority of personnel of Sunesis or any of its Controlled Affiliates; or (ii) conceived and reduced to practice solely by or under authority of personnel of Sunesis or any of its Controlled Affiliates after August 25, 2004, but prior to June 30, 2011 in the course of activities directed to the discovery, research, or development of Collaboration Derivatives. It is to be understood that Sunesis Collaboration Patents shall include any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any of the patent applications or patents in (i) or (ii) above, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing. Notwithstanding the foregoing, Sunesis Collaboration Patents shall in all cases exclude Sunesis Core Technology and Joint Collaboration Patents.

1.66. "Sunesis Collaboration Technology" shall mean all Sunesis Collaboration Patents and Sunesis Collaboration Know-How.

1.67. "Sunesis Core Technology" shall mean all patents, patent applications, and invention disclosures (all as listed on Exhibit 1.67) and all information, materials and other subject matter, and improvements thereof, relating to (i) mutants or the use thereof in screening, (ii) the use of novel protein engineering techniques and their application in drug discovery, (iii) target-directed fragment discovery and maturation to produce drug leads, including monophores, extenders and fragments and monophore, extender and fragment libraries for such purposes, or (iv) covalent tethering and techniques related thereto (e.g. NMR, X-ray, mass spec. AUC, Biacore) and its use to discover fragments and test binding hypotheses of fragments and leads: (a) controlled by Sunesis and/or its Controlled Affiliates prior to June 30, 2008; or (b) made by Biogen Idec in the course of activities directed to the discovery, research, or development of Collaboration Compounds; provided, in the case of (b) that such item was made using or derived from Sunesis Core Technology. Sunesis Core Technology shall also include any divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions or other governmental actions which extend any of the patent applications or patents in (a) or (b) above, and any substitutions, confirmations, registrations, revalidations or foreign counterparts of any of the foregoing.

1.68. "Sunesis Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter or any other method for all uses in humans and/or animals, in which Sunesis or its Affiliates incorporates an Other Compound as an active ingredient.

1.69. "Synthesize," "Synthesis" or "Synthesized" shall mean, with respect to a chemical composition, the act of (i) first physical synthesis of such chemical composition, or (ii) if such composition had previously been first actually synthesized, first physically establishing, in a relevant assay, that such composition is Target Selective against a specific Target. For avoidance of doubt Synthesize shall not include chemical compositions synthesized in vivo.

1.70. "Synthesized Compound" shall mean any Active Compound that was actually Synthesized by either Party alone or by both Parties jointly in the course of performing the OCA during the OCA Research Term, but specifically in the course of activities directed to the Collaboration Target in the performance of the Research Program (as defined therein) in accordance with the then-current OCA Research Plan. For avoidance of doubt, "Synthesized Compounds" shall not include Excluded Compounds.

1.71. "Target" shall mean, except as described in Section 1.3 and 1.14 above, a single human protein, but shall exclude Raf and PDK.

1.72. "Target Selective" shall mean, when used to describe a chemical compound with respect to a specified Target, that such compound exhibits { * } or (ii) { * }. Such Cell-based and enzyme assays, shall be as set forth on Exhibit 1.72, except in such event that Sunesis gives Biogen Idec notice within { * } ({ * }) days of the ARCA Effective Date that it rejects these assays whereupon the Parties shall confer and agree in writing upon alternate assays as soon as is practicable thereafter, which assays shall be attached as Exhibit 1.41 and shall be the enzyme and cell-based assays for purposes of this Section 1.72 (the "BTK Assays").

1.73. "Target Selective Compound" shall mean any Collaboration Compound that is Target Selective against the Collaboration Target.

1.74. "Third Party" shall mean any person or entity other than Sunesis and Biogen Idec, and their respective Affiliates.

1.75. "Valid Claim" shall mean { * }.

1.76. Additional Terms. In addition to the foregoing, the following terms shall have the meaning defined in the corresponding Section below:

Definition	Section Defined	Definition	Section Defined
ARCA Effective Date	Recitals	Joint Steering Committee	5.1
Agreement Product	1.47	Joint Sub-Committee	5.2
BIIB062 Exclusive License	6.4.1	Liabilities	13.1
BIIB062 Reverted Product	3.5.2	Milestone Compound	7.4.1
Biogen Idec Competitor	3.2.4(c)	Milestone Target	7.4.1
BTK Assays	1.72	Notice Period	3.2.1
Change in Control	3.2.4(b)	OCA Effective Date	Recitals
Co-Development Plan and Budget	3.2.2	Other Biogen Idec Technology	6.2.4
Co-Funded Product	3.2.1	Other Sunesis Technology	6.4.4
Co-Funding Percentage	3.2.3	Phase I Date	14.6
Controlling Party	10.3.5	Phase II Drug Collaboration	2.7.1
Cooperating Party	10.3.5	Phase II Notice	3.2.1
Co-Promoted Product	4.2	post Phase I Development Costs	3.2.4(d)
Co-Promotion Option	4.2	Product Team	3.3
Election Notice	3.2.1	Projected Start Date	3.2.1
Election Percentage	4.2.1	Reverted Product	3.5.1

Definition	Section Defined	Definition	Section Defined
Indemnitee	13.3	Royalty Products	7.5.1
Indemnitor	13.3	Sales and Marketing Plan	5.5.2
Indication	7.4.3(b)	Subject Infringement	10.3.1
Initial Development Plan	3.2.1	Term	14.1
Initial Territory	3.2	Terminated Compound	Ex. 3.5.1
Infringement Action	10.3.5		
JCC	5.5.1		
JDC	5.4.1		

ARTICLE 2
TARGET DESIGNATION

2.1. [Reserved].

2.2. [Reserved].

2.3. [Reserved].

2.4. [Reserved].

2.5. [Reserved].

2.6. Designation of Development Candidates. Biogen Idec shall have complete discretion during the Term as to the designation of any Target Selective Compound within the Field as a Development Candidate by providing written notice to Sunesis of such designation. Notwithstanding the foregoing, it is understood and agreed that if Biogen Idec undertakes GLP toxicity studies or GMP manufacturing with respect to a particular Target Selective Compound, such Target Selective Compound shall be deemed designated by Biogen Idec as a Development Candidate for the purposes of Sections 3.3 and 7.3.

2.7. Phase II Drug Collaborations; Excluded Compound Programs.

2.7.1. Phase II Drug Collaborations. Subject to the licenses granted under Article 6, notwithstanding Section 6.6 and subject to the provisions of this Section 2.7: Sunesis shall not be prohibited from collaborating with a Third Party on the development and commercialization of chemical compounds in-licensed from or controlled by such Third Party against the Collaboration Target; provided that (x) Sunesis has not exercised its Co-Funding Option with respect to the Collaboration Target, and (y) that such compounds are in Phase II clinical trials or later stage of development or commercialization at the time of initiation of such collaboration (each, a "Phase II Drug Collaboration"). As of the Effective Date, except for those compounds listed on Exhibit 2.7.1, Sunesis is not a party to a Phase II Drug Collaboration. Sunesis shall notify Biogen Idec in writing upon entering into a Phase II Drug Collaboration. Nothing in this paragraph is intended as the grant of a license by either Party to the other Party.

2.7.2. Excluded Compound Programs. Subject to the licenses granted under Article 6, in addition to the foregoing, neither Party shall be prohibited from researching, developing or commercializing Excluded Compounds, with the proviso that Sunesis shall be subject to the provisions of Section 6.6 below. Nothing in this paragraph is intended as the grant of a license by either Party to the other Party.

2.8. [Reserved].

ARTICLE 3
PRODUCT DEVELOPMENT

3.1. Development by Biogen Idec. Following the selection of each Development Candidate in accordance with Section 2.6 above, Biogen Idec shall be responsible for undertaking a development program aimed at ultimately seeking Regulatory Approval for any Products incorporating such Development Candidate.

3.2. Co-Funding Option. Sunesis shall have the right, on a Product-by-Product basis, to elect to fund a portion of post Phase I Development Costs of Products specifically directed to the Collaboration Target in all countries worldwide other than Japan (the "Initial Territory"). In the event that Sunesis elects to exercise its Co-Funding Option with respect to the Initial Territory for a particular Product pursuant to the preceding sentence, then Sunesis shall have the right to elect to fund a portion of post Phase I Development Costs of such Product in Japan, all in accordance with this Section 3.2.

3.2.1. Election. For so long as Sunesis continues to have a Co-Funding Option, Biogen Idec shall notify Sunesis { * } for each Product in each of the applicable territories described above in Section 3.2 where the primary endpoint of such trial involves a preliminary determination of efficacy. Such notice shall include the date { * }. Sunesis may elect, by so notifying Biogen Idec in writing { * } (the "Notice Period"), to participate in the further development of such Product in the applicable territory, as described in this Section 3.2 (such notice, the "Election Notice"). { * } until the end of the Notice Period, Biogen Idec shall cooperate fully with Sunesis, and shall promptly provide Sunesis with access to such material information, to the extent such information is not included in the Initial Development Plan or otherwise has not been communicated previously to Sunesis, as Sunesis may reasonably request to enable Sunesis to make an informed decision whether to exercise its Co-Funding Option under this Section 3.2 with respect to such Product. Such cooperation shall include, without limitation, consulting with Sunesis in good faith regarding the Initial Development Plan, and the financial, scientific and regulatory assumptions reflected therein. In the event Sunesis exercises its Co-Funding Option with respect to a particular Product (such Product, a "Co-Funded Product"), the provisions of Sections 3.2.2 through 3.2.4 below shall apply with respect to such Co-Funded Product in the Co-Funded Territory. The "Co-Funded Territory" shall consist of the Initial Territory for each Co-Funded Product, and in the event Sunesis elects to exercise its Co-Funding Option for Japan with respect to a particular Co-Funded Product, the Co-Funded Territory shall mean all territories worldwide for such Co-Funded Product.

3.2.2. JDC. For each Co-Funded Product, the Parties shall establish and maintain a JDC in accordance with Section 5.4 below, which shall be responsible for establishing the plan and budget for the development of each Development Candidate (each, a "Co-Development Plan and Budget") and overseeing the implementation of such plan. Such Co-Development Plan and Budget shall be comprehensive and shall fully describe at least the

proposed activities related to ongoing preclinical studies, formulation, process development, clinical studies and regulatory plans, and other activities and timelines directed to obtaining the initial and subsequent Regulatory Approvals in each applicable country. Unless otherwise specified in a Co-Development Plan and Budget amounts reflected for a full year shall be deemed budgeted in equal amounts for each calendar quarter of such year.

3.2.3. Co-Funding Obligation. In the event Sunesis exercises its Co-Funding Option with respect to a Product, Sunesis shall be obligated to reimburse Biogen Idec for a percentage (the "Co-Funding Percentage") of post Phase I Development Costs for such Product, subject to the provisions of this Section 3.2. It is understood and agreed that the Co-Funding Percentage shall initially be { * } percent ({ * }%) for each Co-Funded Product. In addition the following shall apply:

(a) The Co-Development Plan and Budget will be updated on a quarterly basis. Promptly following the final Biogen Idec Board of Directors meeting each calendar year during the development activities for a particular Co-Funded Product or such other date as is mutually agreed by the Parties, the JDC shall update and amend the Co-Development Plan and Budget for such Co-Funded Product for the subsequent year. Biogen Idec shall provide Sunesis with reasonable opportunity to provide input into each Co-Development Plan and Budget, and , subject to Article 5, Biogen Idec shall reasonably consider Sunesis' comments in establishing and updating each Co-Development Plan and Budget.

(b) Within thirty (30) days after the end of each calendar quarter, Biogen Idec shall provide to Sunesis a statement reflecting the total post Phase I Development Costs incurred by Biogen Idec in accordance with the then-current Co-Development Plan and Budget during such calendar quarter with respect to each Co-Funded Product. Within thirty (30) days after Sunesis' receipt of such statement, Sunesis shall reimburse Biogen Idec for the applicable Co-Funding Percentage of the post Phase I Development Costs incurred by Biogen Idec during such calendar quarter for such Co-Funded Product.

(c) Upon ninety (90) days written notice to Biogen Idec, Sunesis may terminate its Co-Funding Option for a particular Co-Funded Product. In such event, Sunesis' funding obligation under this Section 3.2.3 above shall apply only with respect to post Phase I Development Costs for activities conducted with respect to such Co-Funded Product prior to the effective date of such termination. Should Sunesis terminate its Co-Funding Option under this Section 3.2 with respect to a particular Co-Funded Product, (i) any royalties payable to Sunesis on such Co-Funded Product shall be paid in accordance with Section 7.5.1, subject to Section 7.5.2(b), and (ii) Sunesis shall relinquish its right to participate in the JDC pursuant to Section 5.4 and any right to its Co Promotion Option under Section 4.2 for such Co-Funded Product.

(d) Upon written notice to Biogen Idec at least ninety (90) days prior to the end of a budget year, Sunesis may elect to { * }, by so notifying Biogen Idec in writing, referencing this Section 3.2.3(d) and specifying { * }. In such event, Sunesis shall receive a { * } in accordance with the schedule set forth in Section 7.5.2(c) below { * }. Upon such election, Sunesis' previous Co-Funding Percentage under this Section 3.2.3 shall apply only with respect to post Phase I Development Costs for activities conducted

with respect to such Co-Funded Product { * } with respect to such Co-Funded Product. Sunesis may { * } provided that (i) Sunesis shall not be permitted { * } its Co-Funding Percentage for such Co-Funded Product, and (ii) Sunesis may { * }. As used herein, "budget year" shall mean a calendar year, provided that Biogen Idec shall have the right to change the budget year to coincide with Biogen Idec's annual budget cycle, provided that Biogen Idec provide Sunesis with at least one hundred twenty (120) days' notice of such change.

(e) Notwithstanding the foregoing, in the event that Sunesis experiences a Change in Control, then Sunesis' Co-Promotion rights under Section 4.2 and the right to participate in the JDC under Section 5.4 and any Product Teams under Section 3.3 shall terminate. In addition:

(i) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option prior to such Change of Control, Sunesis' rights and obligations under this Section 3.2.3 shall continue, provided that Biogen Idec shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis (or its successor entity), but shall provide Sunesis (or its successor entity) with annual budgets of post Phase I Development Costs for such Co-Funded Product.

(ii) Sunesis' Co-Funding Option with respect to future Products shall continue as well (i.e. with respect to Products that are not Co-Funded Products as of the date of such Change of Control), provided that Biogen Idec shall no longer be obligated to provide for each Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice. Biogen Idec shall, however, provide Sunesis (or its successor entity) with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 3.2.1, and shall provide reasonable cooperation to Sunesis (or its successor entity) in evaluating such Product and the post Phase I Development Costs related thereto, including consulting with Sunesis (or its successor entity) in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

3.2.4. Certain Terms. As used in this Section 3.2, the following terms shall have the meanings set forth below:

(a) [Reserved].

(b) "Change in Control" shall mean { * }.

(c) "Biogen Idec Competitor" shall mean { * }.

(d) "post Phase I Development Costs" shall mean, with respect to a particular Co-Funded Product, the Development Costs incurred by the Parties or their Affiliates after completion of Phase I trials for such Co-Funded Product in the Co-Funded Territory for such Co-Funded Product. For the avoidance of doubt, (i) post Phase I Development Costs shall not include any Development Costs incurred by the Parties or their Affiliates for any subsequent Phase I trials, and (ii) Development Costs relating to activities directed at obtaining Regulatory Approval in Japan for a Co-Funded Product shall not be considered post Phase I Development Costs to the extent such Development Costs are incurred (A) prior to completion of the Phase I trials for such Co-Funded Product in Japan, or (B) if no Phase I trials are necessary or performed for such Co-Funded Product in Japan, then prior to initiation of any clinical trial other than a Phase I trial.

3.3. Product Team. Upon Sunesis' exercise of the Co-Funding Option, the Parties shall form a product team with respect to each Co-Funded Product that shall report to the JDC, comprised of Biogen Idec and Sunesis personnel that will implement the further development and regulatory affairs with respect to that Co-Funded Product (each a "Product Team") in accordance with the Co-Development Plan and Budget. It is understood that both Biogen Idec and Sunesis shall have the opportunity for meaningful participation in the activities of the Product Team commensurate with their respective levels of funding participation. Sunesis shall be notified at least two weeks in advance of the date of each Product Team meeting and shall have the opportunity to have its representatives attend such meeting. Biogen Idec shall provide such Sunesis representatives with all information distributed to Biogen Idec members of the Product Team, and such other material information as Sunesis may reasonably request from time to time.

3.4. Regulatory Matters. Subject to Section 3.5.1, Biogen Idec shall file and be the owner of all regulatory filings for Target Selective Compounds and/or Products (including Co-Funded Products) developed pursuant to this Agreement, including all NDAs and Regulatory Approvals, unless otherwise agreed by the Parties. Subject to Section 3.5.2, Sunesis shall file and be the owner of all regulatory filings for BIIB062 and BIIB062 Products developed pursuant to this Agreement, including all NDAs and Regulatory Approvals, unless otherwise agreed by the Parties.

3.5. Product Reversion.

3.5.1. In the event that Biogen Idec fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Co-Funded Product pursuant to Article 9 or in the event that Sunesis terminates this Agreement pursuant to Section 14.2 for Biogen Idec's breach, pursuant to Section 14.3 for Biogen Idec's bankruptcy or in the event that Biogen Idec terminates this Agreement pursuant to Section 14.4 for convenience, Sunesis shall have the right to assume the development and commercialization of such Co-Funded Product, subject to the terms and conditions of this Section 3.5.1, upon notice to Biogen Idec. Upon effective date of such notice from Sunesis, such Co-Funded Product shall be designated a "Reverted Product", the terms set forth in Section 1 of Exhibit 3.5.1 attached hereto shall thereafter apply, and Sunesis shall pay royalties to Biogen Idec as provided under 7.6.2 on Net Sales of such Reverted Product by Sunesis.

3.5.2. In the event that (i) Sunesis fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a BIIB062 Product pursuant to the terms of this Agreement, and Biogen Idec provides Sunesis with written notice of such failure, (ii) Biogen Idec terminates this Agreement for Sunesis' breach or bankruptcy pursuant to Section 14.2 or 14.3, respectively, (iii) Biogen Idec terminates the BIIB062 Terms for failure to initiate a Phase I clinical trial pursuant to Section 14.6 or (iv) Sunesis terminates the BIIB062 Terms for convenience pursuant to Section 14.5, Biogen Idec shall, in each case, assume responsibility for the development and commercialization of BIIB062 and BIIB062 Product, subject to the terms

and conditions of this Agreement. Upon the effective date of such notice from Biogen Idec or the effective date of any such termination, as the case may be, such BIIB062 Product shall be designated a "BIIB062 Reverted Product", the BIIB062 Exclusive License shall terminate, and the terms set forth in Exhibit 3.5.2 attached hereto shall thereafter apply.

3.6. BIIB062 Inventory. Biogen Idec shall deliver to Sunesis all BIIB062 inventory in its possession as of the Effective Date, including intermediates and raw materials, pursuant to written instructions prepared by Sunesis as to location and method of delivery and received by Biogen Idec not more than forty-five (45) days following the Effective Date. For so long as no BIIB062 Product is designated a BIIB062 Reverted Product pursuant to Section 3.5.2 above, Sunesis shall, at no cost to Biogen Idec, provide to Biogen Idec such amounts of BIIB062 as Biogen Idec shall reasonably request to conduct its internal research and development activities under Section 6.4.2. The Parties further agree that, with respect to all transfers of BIIB062 inventory under this Section 3.6, the receiving Party shall be responsible for all shipping and delivery related costs and title to such inventory shall pass to the receiving Party upon placement by the other Party of such inventory with the carrier selected by the receiving Party. The Parties further agree that all such inventory shall be provided on an as-is, where-is basis, without any express or implied warranty of any kind.

ARTICLE 4
PRODUCT COMMERCIALIZATION

4.1. Commercialization Rights. Subject to the provisions of Section 4.2, Biogen Idec shall be responsible for the establishment and implementation of the strategy, plans and budgets for marketing and promotion of the Products.

4.2. Co-Promotion Option. Sunesis will have an option (the "Co-Promotion Option") to co-promote each Co-Funded Product in the Co-Funding Territory, according to the terms and conditions set forth in this Section 4.2. This Co-Promotion Option may be exercised at Sunesis' discretion on a Product-by-Product and country-by-country basis for any Co-Funded Product, by so notifying Biogen Idec in writing within { * } for such Co-Funded Product in such country (each such Co-Funded Product for which Sunesis exercises the Co-Promotion Option being referred to as a "Co-Promoted Product"). { * } Biogen Idec shall provide to Sunesis with a good faith estimate of the number of field force personnel to be deployed for such Co-Funded Product in the applicable territory for { * } together with a then-current Sales and Marketing Plan for such Co-Funded Product. The estimate of the number of field force personnel to be deployed shall be prepared by the JCC, and shall take into consideration the then-current marketing and promotion practices in the relevant markets and the number and nature of other products, if any, including the detail position, if applicable, that such field force personnel will be selling. In situations where field force personnel will be selling multiple products, the JCC shall make a good faith allocation of the field force personnel's time to be spent on each product. As used in this Section 4.2, "co-promote" or "co-promotion" shall mean to promote jointly or joint promotion of a Product through Biogen Idec's and Sunesis' respective sales forces under the same brand name, with Biogen Idec booking all sales of such Co-Promoted Product.

4.2.1. Scope and Coordination of Co-Promotion. Upon exercise of its Co-Promotion Option with respect to a Co-Promoted Product, Sunesis shall have the right to field up to { * } (the "Election Percentage") of the field force, as such field force is determined in good faith by the JCC, with respect to the Co-Promoted Product in the applicable territory. The JCC shall be responsible for coordinating the co-promotion activities under this Section 4.2, and shall develop the strategies and programs to optimally carry out marketing and promotional activities, including but not limited to, the assignment of sales force responsibilities in accordance with the Sales and Marketing Plan. It is understood that Sunesis may use one or more contract service organizations for its activities under this Section 4.2, provided that with respect to each Co-Promoted Product, Sunesis { * } for such Co-Promoted Product. Sunesis field sales force representatives will be employed by Sunesis and Sunesis shall be responsible for all the payment of all such representatives' salary, out-of pocket expenses (other than for promotional materials), bonus (Sunesis shall adopt substantially similar bonus plans/systems as Biogen Idec to reward sales) and benefits, pension, insurance, social security and any other related obligations. Sunesis shall within thirty (30) days of the end of each calendar quarter send a written report to Biogen Idec setting out for each applicable territory and each Co-Promoted Product, the number of field sales force representatives performing co-promotion activities hereunder, and the number and nature of other products, if any, that such field force personnel promoted during such calendar quarter. In the event that { * } that are allocated to Sunesis in the applicable Sales and Marketing Plan, Biogen Idec may terminate Sunesis' right to co-promote such Co-Promoted Product in such country upon written notice to Sunesis.

4.2.2. Co-Promotion Obligations. Sunesis shall employ a professional and trained sales force to co-promote the Co-Promoted Product, and such sales force shall meet standards of competence and professionalism as are common in the pharmaceutical industry. In all events, Sunesis' co-promotion shall be conducted as directed by the JCC and in accordance with the then current Sales and Marketing Plan and in accordance with all applicable laws. Biogen Idec shall provide to Sunesis sales personnel at Biogen Idec's expense any Co-Promoted Product-specific training and promotional materials (including samples), and shall permit Sunesis sales personnel to attend and participate in any Co-Promoted Product-specific seminars and sales training programs at no charge to Sunesis, in each case as reasonably necessary to effectively promote the particular Co-Promoted Product consistent with the Sales and Marketing Plan.

4.2.3. Reimbursement. For the performance of the obligations of Sunesis under this Section 4.2, Biogen Idec shall reimburse Sunesis as described herein. { * } In the event that Sunesis sales representatives promote any other products other than such Co-Promoted Product, then Biogen Idec shall only reimburse for the pro rata share of the cost of such Sunesis sales representatives.

4.2.4. Right to Terminate Co-Promotion. Sunesis shall have the right, on a territory by territory basis, to terminate its co-promotion of any Co-Promoted Product, and its obligations under this Section 4.2 with respect to such Co-Promoted Product, on a Co-Promoted Product-by-Co-Promoted Product basis, upon one hundred eighty (180) days prior notice to Biogen Idec. Upon termination of co-promotion under this Section 4.2.4, Sunesis shall have no right to reimbursement by Biogen Idec under Section 4.2.3 for services provided after the effective date of such termination.

4.3. Amendment of Sales and Marketing Plan. Promptly upon exercise of Sunesis' Co-Promotion Option hereunder, the JCC shall meet to revise the Sales and Marketing Plan to reflect the sales activities to be undertaken by Sunesis, including without limitation the formulation of a mechanism to establish and adjust cost allocation, and the definition of a relevant field sales force promotional activity metric for purposes of allocating the activities of sales representatives.

4.4. Sunesis Logo. The name and logo of Sunesis shall appear, with reasonable size and prominence, on all packaging, package inserts, (and to the extent permitted) labeling, marketing and sales materials and advertisements for all Co-Promoted Products in the applicable territory.

4.5. Sunesis Insurance. In the event that Sunesis exercises its Co-Promotion Option, Sunesis shall procure and continue to maintain, at its own cost, the following insurance coverage: Commercial General Liability, including coverage for products and completed operations (maintained for a period of at least five (5) years after expiration or termination of this Agreement) and contractual liability (including coverage for advertising and personal injury). The JCC shall set commercially reasonable and appropriate minimum terms and conditions for such insurance coverage, consistent with then-current pharmaceutical industry practice for commercialization efforts of similar scope to the co-promotion activities undertaken hereunder. Sunesis shall provide Biogen Idec with a certificate of insurance reflecting such coverage.

4.6. Commercialization of BIIB062 Product. Subject to the terms of this Agreement, Sunesis shall be solely responsible for the commercialization of BIIB062 Products.

ARTICLE 5
MANAGEMENT

5.1. Joint Steering Committee. The Parties have established a joint steering committee ("Joint Steering Committee") to provide oversight and management of the activities undertaken under this Agreement that do not relate to BIIB062 (and BIIB062 shall not be subject to the Joint Steering Committee in any event). The Joint Steering Committee shall be composed of two (2) representatives of each Party who shall be appointed (and may be replaced at any time) by such Party on prior written notice to the other Party in accordance with this Agreement. At least one (1) representative of a Party on the Joint Steering Committee shall be a vice-president or more senior officer of such Party, and the representatives shall have relevant experience and expertise in research, development and commercialization of biopharmaceuticals.

5.1.1. Responsibilities. The Joint Steering Committee shall be responsible for (i) reviewing the efforts of the JDC in the conduct of ongoing development activities and regulatory affairs with respect to Co-Funded Products under Article 3, and resolving disputes as to matters to be decided by the JDC under this Agreement; (ii) reviewing the efforts of the JCC in the conduct of promotional activities of the Parties with respect to Co-Promoted Products under Article 4, and resolving disputes as to matters to be decided by the JCC under this Agreement and (iii) taking such other actions as are specifically allocated to the Joint Steering Committee under this Agreement.

5.1.2. Meetings. The Joint Steering Committee shall meet quarterly, or at such frequency as agreed by the respective committee members. Meetings of the Joint Steering Committee shall be at such locations as the Parties agree, and will otherwise communicate regularly by telephone, electronic mail, facsimile and/or video conference. With the consent of the Parties, other representatives of Sunesis or Biogen Idec may attend the Joint Steering Committee meetings as nonvoting observers.

5.1.3. Decisions. Any approval, determination or other action of the Joint Steering Committee shall require agreement of the members of the Joint Steering Committee, with each Party having one (1) vote. Action that may be taken at a meeting of the Joint Steering Committee also may be taken without a meeting if a written consent setting forth the action so taken is signed by all members of the Joint Steering Committee.

5.1.4. Disputes. In the event the Joint Steering Committee is unable to reach consensus on a particular matter within its jurisdiction or that of the JDC or JCC (other than as explicitly set forth in Section 15.2 below), the matter shall be referred to executives of the Parties in accordance with Section 15.1, and if such referral does not resolve such matter, then Biogen Idec shall have the right to cast a deciding vote on the JSC. Notwithstanding the foregoing, Biogen Idec shall not have the right to exercise such deciding vote in a manner that is not consistent with the other terms and conditions of this Agreement or that imposes a material obligation on Sunesis. In the evaluation of a Diligence Summary pursuant to Section 1.23, any decision of the JSC shall be binding on the Parties, but in the event the JSC is unable achieve agreement with respect to such evaluation, then such dispute shall be resolved as set forth in Section 1.23.

5.2. Joint Sub-Committees. The Parties shall form the JDC and JCC (each, a "Joint Sub-Committee") in accordance with the terms set forth in Sections 5.2, 5.4 and 5.5.

5.2.1. Generally. Each Joint Sub-Committee shall meet at such locations as the Parties agree, and will otherwise communicate regularly by telephone, electronic mail, facsimile and/or video conference. Each Party shall be responsible for all of its own expenses associated with attendance of such meetings, and either Party may replace its respective representatives to each Joint Sub-Committee at any time, with prior written notice to the other Party. From time to time, each Joint Sub-Committee may establish further subcommittees to oversee particular projects or activities, and such further subcommittees will be constituted as such Joint Sub-Committee approves.

5.2.2. Decision Making. Decisions of each Joint Sub-Committee shall be made by unanimous approval of the team leaders from each Party present in person or by other means (e.g., teleconference) at any meeting; provided that at least one member from each Party must be so present and voting. In the event that unanimity is not achieved within a Joint Sub-Committee on a decision required to be made by such Joint Sub-Committee, the matter will be referred to the Joint Steering Committee, which in each case shall promptly meet and endeavor in good faith to resolve such matter in a timely manner. In the event the Joint Steering Committee is unable to reach consensus on a particular matter, such matter shall be resolved in accordance with Section 5.1.4 above.

5.3. [Reserved].

5.4. Joint Development Committee.

5.4.1. Formation. Promptly following notice from Sunesis that it is exercising its Co-Funding Option, the Parties shall establish a Joint Development Committee ("JDC") with respect to the development of such Co-Funded Product(s). The JDC will be composed of up to three (3) representatives of Biogen Idec (at Biogen Idec's discretion) and at least one (1) representative of Sunesis who shall be appointed (and may be replaced at any time) by the respective Party on written notice to the other Party in accordance with this Agreement. In the event that Sunesis undergoes a Change of Control (as that term is defined in Section 3.2.4(b) above), the JDC shall be dissolved in accordance with Section 3.2.3(e).

5.4.2. Responsibilities. The responsibilities of the JDC shall consist of (i) overseeing the ongoing development of Co-Funded Product(s), (ii) establishing Co-Development Plans and Budgets for Co-Funded Products, (iii) monitoring and approving development activities under such Co-Development Plans and Budgets, (iv) reviewing and approving regulatory correspondence, final study reports and submissions to Regulatory Authorities relating to Co-Funded Products, and (v) making such decisions as are expressly provided in Article 3.

5.4.3. Meetings and Information. The JDC shall meet at least quarterly. Biogen Idec shall notify Sunesis at least two weeks in advance of the date of each JDC meeting, and Sunesis shall have the opportunity to send the Sunesis representative to each such meeting. Biogen Idec shall provide such Sunesis representative with schedules of all such meetings, as well as any other information distributed to Biogen Idec members of the JDC.

5.5. Joint Commercialization Committee.

5.5.1. Formation. Upon request by either Party following the initiation of the first Phase III clinical study for a Co-Funded Product, the Parties shall establish a Joint Commercialization Committee ("JCC") with respect to commercialization of such Co-Funded Product(s). The JCC will be composed of up to three (3) representatives of Biogen Idec (at Biogen Idec's discretion) and at least one (1) representative of Sunesis who shall be appointed (and may be replaced at any time) by the respective Party on written notice to the other Party in accordance with this Agreement.

5.5.2. Responsibilities. The JCC shall have responsibility to monitor the conduct and progress of the commercialization strategy, plans, and budgets, including establishment of a plan and budget for the marketing, promotion, sale and distribution of such Co-Funded Product (each a "Sales and Marketing Plan") and managing the promotional activities of the Parties with respect to Co-Promoted Products under Article 4 above. JCC shall update the Sales and Marketing Plan periodically, and no less often than annually, and shall include therein detailed plans and budgets for the marketing, promotion, sale and distribution of each Co-Funded Product.

5.5.3. Meetings and Information. The JCC shall meet at least quarterly. Biogen Idec shall notify Sunesis at least two weeks in advance of the date of each JCC meeting, and Sunesis shall have the opportunity to send at least one Sunesis representative to each such meeting, who shall be designated as a member of the JCC. Biogen Idec shall provide such Sunesis representative with schedules of all such meetings, as well as any material information distributed to Biogen Idec members of the JCC.

ARTICLE 6
LICENSES

6.1. Research Licenses

6.1.1. Research Licenses to Biogen Idec.

(a) [Reserved].

(b) [Reserved].

(c) *Sunesis Collaboration Technology for Collaboration Compounds*. Subject to the terms and conditions of this Agreement, Sunesis grants to Biogen Idec a worldwide, non-exclusive license under the Sunesis Collaboration Technology and Sunesis' interest in the Joint Collaboration Technology, in each case with the right to grant sublicenses to the extent provided in Section 6.1.3, to make, discover, research and/or develop Collaboration Compounds, alone or as incorporated into Other Biogen Idec Products.

6.1.2. Research Licenses to Sunesis.

(a) [Reserved].

(b) *Joint Collaboration Technology for Collaboration Compounds*. Subject to the terms and conditions of this Agreement, Biogen Idec grants to Sunesis a worldwide, non-exclusive license under Biogen Idec's interest in the Joint Collaboration Technology, with the right to grant sublicenses to the extent provided in Section 6.1.3, to make, discover, research and/or develop Collaboration Compounds, alone or as incorporated into Sunesis Products.

6.1.3. Sublicensing of Research Licenses. Subject to the terms and conditions of this Agreement, either Party shall have the right to grant sublicenses (but not to authorize the grant of further sublicenses) of the rights granted under Sections 6.1.1 and 6.1.2 above except as otherwise set forth therein, provided that such sublicense is granted (i) to a contract research organization (CRO) where the sublicensing Party retains all commercialization rights to compounds produced by the CRO, or (ii) for the purposes of a bona fide research collaboration with a Third Party where the sublicensing Party remains substantially involved in the performance of the research with such Third Party collaborator.

6.2. Commercialization Licenses.

6.2.1. License under the Sunesis and Joint Collaboration Technology to Target Selective Compounds. Subject to the terms and conditions of this Agreement (including Section 6.1.2 above), Sunesis hereby grants to Biogen Idec a worldwide, exclusive license under the

Sunesis Collaboration Technology and Sunesis' interest in the Joint Collaboration Technology, in each case with the right to grant and authorize sublicenses as provided in Section 6.5, to research, develop, make, have made, use, import, offer for sale, sell and otherwise exploit Target Selective Compounds for any purpose, without regard to the mechanism of action of such Target Selective Compound, alone or as incorporated into a Product.

6.2.2. License under the Sunesis Core Technology to Target Selective Compounds. Subject to the terms and conditions of this Agreement, Sunesis hereby grants to Biogen Idec a worldwide, non-exclusive license under the Sunesis Core Technology to make, have made, use, import, offer for sale and sell Target Selective Compounds for any purpose, without regard to the mechanism of action of such Target Selective Compound, alone or as incorporated into a Product. It is understood that the foregoing license to Sunesis Core Technology shall not include the right to practice Sunesis Core Technology to discover novel compositions.

6.2.3. License under the Licensed Pre-Existing Technology to Licensed Pre-Existing Compounds. Subject to the terms and conditions of this Agreement, Sunesis hereby grants to Biogen Idec a worldwide, exclusive license under the Licensed Pre-Existing Technology, with the right to grant and authorize sublicenses as provided in Section 6.5, to research, develop, make, have made, use, import, offer for sale, sell and otherwise exploit Licensed Pre-Existing Compounds for any purpose, without regard to the mechanism of action of such Licensed Pre-Existing Compound, alone or as incorporated into a Product.

6.2.4. Reverted Products. Subject to the terms and conditions of this Agreement (including Section 6.1.1 above), with respect to each Terminated Compound Biogen Idec hereby grants to Sunesis a worldwide, exclusive license under Biogen Idec's interest in the Biogen Idec Collaboration Technology, Joint Collaboration Technology and other intellectual property rights in existence and owned or controlled by Biogen Idec as of the date such Collaboration Compound becomes a Terminated Compound ("Other Biogen Idec Technology"), with the right to grant and authorize sublicenses as provided in Section 6.5, to research, develop, make, have made, use, import, offer for sale, sell and otherwise exploit such Terminated Compound, alone or as incorporated into a Reverted Product. It is understood and acknowledged that the licenses granted with respect to Biogen Idec Collaboration Technology and Other Biogen Idec Technology in this Section 6.2.4 extend solely to that technology that is being used on that Terminated Compound (or a Reverted Product incorporating such Terminated Compound) as of the date of such reversion to Sunesis, and solely to the extent necessary for Sunesis to continue development and commercialization of such Terminated Compound (or a Reverted Product incorporating such Terminated Compound) in the form in which such Terminated Compound or Reverted Product exist as of the date of such reversion to Sunesis.

6.3. Other Compounds.

6.3.1. License to Biogen Idec for Other Biogen Idec Products.

(a) Subject to the terms and conditions of this Agreement, Sunesis hereby grants to Biogen Idec a worldwide, non-exclusive license under the Sunesis Collaboration Technology and Sunesis' interest in the Joint Collaboration Technology, in each case with the right to grant and authorize sublicenses as provided in Section 6.5, to research, develop, make, have made, use, import, offer for sale, sell and otherwise exploit Other Compounds for any purpose, alone or as incorporated in Other Biogen Idec Products.

(b) [Reserved].

6.3.2. License to Sunesis for Sunesis Products.

(a) Subject to the terms and conditions of this Agreement, Biogen Idec hereby grants to Sunesis a worldwide, non-exclusive license under Biogen Idec's interest in the Joint Collaboration Technology, in each case with the right to grant and authorize sublicenses as provided in Section 6.5, to research, develop, make, have made, use, import, offer for sale, sell and otherwise exploit Other Compounds for any purpose, alone or as incorporated in Sunesis Products.

(b) [Reserved].

(c) For the avoidance of doubt, it is understood and acknowledged that the licenses set forth in this Section 6.3.2 shall not extend to Biogen Idec Derivatives.

6.4. BIIB062 License.

6.4.1. Exclusive License to Sunesis. Subject to the terms and conditions of this Agreement, Biogen Idec hereby grants to Sunesis a worldwide, exclusive license under the BIIB062 Technology, with the right to grant and authorize sublicenses as provided in Section 6.5, to develop, make, have made, use, import, offer for sale, sell and otherwise exploit BIIB062 and BIIB062 Products in the Oncology Field (the "BIIB062 Exclusive License").

6.4.2. Biogen Idec Retained Rights. Notwithstanding the BIIB062 Exclusive License, Biogen Idec shall retain all of its right, title and interest in the BIIB062 Technology solely for its internal research and development purposes in all fields; provided, however, that during the Term of this Agreement, Biogen Idec shall not transfer or otherwise sublicense such BIIB062 Technology to any Person other than a Biogen Idec Affiliate or an academic or non-profit institution that is a collaborator or partner of Biogen Idec pursuant to a written agreement, without the prior written consent of Sunesis.

6.4.3. Other Indications. Subject to Section 6.4.2, during the Term of this Agreement, neither Party, nor its respective Affiliates or Sublicensees, shall develop or commercialize BIIB062 for any and all indications outside of the Oncology Field.

6.4.4. BIIB062 Reverted Products License. Effective upon Biogen Idec's assumption of the development, manufacture and commercialization of BIIB062 and BIIB062 Product pursuant to Section 3.5.2 (the "BIIB062 Reversion Date") Sunesis hereby grants to Biogen Idec a worldwide, exclusive license under Sunesis' interest in the Sunesis Collaboration Technology, Joint Collaboration Technology and other intellectual property rights in existence

and owned or controlled by Sunesis as of the BIIB062 Reversion Date (the "Other Sunesis Technology"), with the right to grant and authorize sublicenses as provided in Section 6.5, to develop, make, have made, use, import, offer for sale, sell and otherwise exploit BIIB062 and BIIB062 Reverted Product. It is understood and acknowledged that the licenses granted with respect to Sunesis Collaboration Technology and Other Sunesis Technology in this Section 6.4.4 extend solely to that technology that is being used on BIIB062 (or a BIIB062 Reverted Product) as of the BIIB062 Reversion Date, and solely to the extent necessary for Biogen Idec to continue development, manufacture and commercialization of BIIB062 (or a BIIB062 Reverted Product) in the form in which BIIB062 or such BIIB062 Reverted Product existed on the BIIB062 Reversion Date.

6.5. Commercialization Sublicenses. Within a reasonable period of time following grant of any such sublicense, to the extent sublicensing is permitted under Section 6.2, 6.3 or 6.4 above, the sublicensing Party shall provide the other Party with a summary of such sublicense, including the identity of the Sublicensee (including any Affiliate) and the rights granted with respect thereto for each product and territory, sufficient to allow such other Party to verify any amounts then or subsequently due under Articles 7 and 8 below; provided that such summary may redact confidential information that the sublicensing Party is reasonably prohibited from disclosing under the sublicense agreement. Any sublicense granted under this Section 6.5 shall be consistent with all of the terms and conditions of this Agreement, and subordinate thereto, and the sublicensing Party shall remain responsible to the other Party for the compliance of each such Sublicensee with the obligations due under this Agreement.

6.6. Sunesis Covenant { * }. Notwithstanding the foregoing, the covenant set forth in this Section 6.6 shall not apply to (i) any pharmaceutical compound that is { * } with respect to which Biogen Idec is not using Commercially Reasonable and Diligent Efforts or (ii) BIIB062. Biogen Idec shall provide Sunesis with a Diligence Summary with respect to the { * }.

6.7. BTK Assays. Biogen Idec hereby grants, subject to its rights therein, to Sunesis, a fully-paid, royalty-free, worldwide, non-exclusive, perpetual, irrevocable and sublicenseable license to use, import and manufacture (and have made) the BTK Assays for purposes of this Agreement.

6.8. No Other Rights; No Implied Licenses. Only the licenses granted or retained pursuant to the express terms of this Agreement shall be of any legal force or effect. No other license rights shall be created by implication, estoppel or otherwise.

ARTICLE 7
PAYMENTS

7.1. [Reserved].

7.1.1. [Reserved].

7.1.2. [Reserved].

7.1.3. [Reserved].

7.1.4. [Reserved].

7.2. [Reserved].

7.2.1. [Reserved].

7.3. Research Milestones. Biogen Idec shall pay to Sunesis the following amounts within thirty (30) days following the first achievement of the following research milestones with respect to the Collaboration Target:

Research Milestones	**Payment Amount**
1. The earlier of (i) designation of the first Hit Compound (as defined under the OCA) for such Collaboration Target by the JRC (as defined under the OCA), or (ii) identification of the first Collaboration Compound to meet Hit Compound Criteria for such Collaboration Target.*	$500,000
2. Approval by Biogen Idec, in accordance with Section 2.6, of the First Development Candidate (as defined under the OCA) for such Collaboration Target.*	${ * }
3. Approval by Biogen Idec, in accordance with Section 2.6, of the second Development Candidate for such Collaboration Target (for purposes of Section 7.4.2, a { * }):	${ * }

* Sunesis acknowledges receipt of payment of this Research Milestone prior to the Effective Date.

7.4. Development Milestones.

7.4.1. Development Milestone Payments. With respect to (i) the Collaboration Target, and (ii) each Kinase Target to which an Other Biogen Idec Product is directed (a "Milestone Target"), Biogen Idec shall pay to Sunesis on a Target-by-Target basis the following amounts within thirty (30) days following the first achievement by Biogen Idec, its Affiliates or Sublicensees, as the case may be, of each of the following milestones with respect to (x) the Collaboration Compound, or (y) a Product or Other Biogen Idec Product (excluding for purposes hereof any Non-Kinase Other Biogen Idec Product) incorporating the Collaboration Compound (a "Milestone Compound"):

Development Milestones	Payment Amount {1st Indication	2nd Indication}
{1. Initiation of the first Phase I trial for such Milestone Compound in any country (for purposes of Section 7.4.2, a "Forgiven Milestone"):	$ 1,000,000	N/A
2. Initiation of the first Phase II trial for such Milestone Compound in any country (for purposes of Section 7.4.2, a "Forgiven Milestone"):	N/A	$ 750,000
3. Initiation of the first Phase III trial for such Milestone Compound in any country:	$ 3,000,000	$ 2,250,000
4. Filing of a NDA in the U.S. for such Milestone Compound:	$ 5,000,000	$ 3,750,000}
{5. Filing of an NDA with EMEA for such Milestone Compound:	$ 4,000,000	$ 3,000,000
6. Filing of a NDA in Japan for such Milestone Compound:	$ 2,000,000	$ 1,500,000
7. Regulatory Approval in the U.S. of such Milestone Compound:	$ 8,000,000	$ 6,000,000
8. Regulatory Approval by EMEA of such Milestone Compound:	$ 6,000,000	$ 4,500,000
9. Regulatory Approval in Japan of such Milestone Compound:	$ 4,000,000	$ 3,000,000}

Subject to Section 7.4.2 below, such milestone payments shall be non-refundable and non-creditable against other amounts due Sunesis hereunder.

7.4.2. BIIB062-Related Milestones. During the Term of this Agreement, and unless and until this Section 7.4.2 is earlier terminated by either Party pursuant to Sections 14.5 or 14.6, the { * }, except as expressly set forth in this Section 7.4.2.

(a) Initiation of the { * } for BIIB062. Upon the { * } for a BIIB062 Product by Sunesis, its Affiliates or their Sublicensees (the "Initiation Date"), Sunesis shall pay to Biogen an amount equal to { * }.

(b) { * } for BIIB062. If at any time after the Initiation Date, Biogen Idec shall achieve one or more of the { * } that had not been achieved on or before the Initiation Date, then each such { * } shall be { * } on the date of such achievement and { * }.

7.4.3. Certain Additional Terms.

(a) Target-by-Target Milestones. It is understood that, subject to Section 7.4.3(b), the payments under this Section 7.4 shall be due only once with respect to each Milestone Target.

(b) Multiple Indications. With respect to a particular Milestone Target, { * }.

(c) Discontinued Compounds. If Biogen Idec ceases all clinical development of a particular Milestone Compound that is specifically directed at a particular Milestone Target, after having made one or more of the payments due under Section 7.4.1 above on the achievement of a particular milestone by such Milestone Compound, there shall be no payment due upon the accomplishment of that same milestone with respect to the next Milestone Compound that is specifically directed at the same Milestone Target to achieve such milestone.

(d) Accrued Milestones. If a research milestone for a Milestone Target under Section 7.3 above is achieved with respect to such Milestone Target, or a development milestone for a Milestone Compound under Section 7.4.1 above is achieved with respect to such Milestone Compound, in each case before a prior research milestone under Section 7.3 or a prior development milestone under Section 7.4.1 for such Milestone Target or Milestone Compound, respectively, then the earlier milestone payments shall then also be due with respect to such Milestone Target or Milestone Compound, as the case may be.

7.4.4. Reports; Payments. Within ten (10) business days of the occurrence of any event which would trigger a milestone payment according to Section 7.3 or 7.4, Biogen Idec shall inform Sunesis of such occurrence. The corresponding payment shall be due thirty (30) days after the occurrence of such event.

7.5. Royalties on annual Net Sales of Products.

7.5.1. Products Generally. Subject to Section 7.5.2 and 7.5.3, Biogen Idec shall pay to Sunesis a royalty on Net Sales by Biogen Idec, its Affiliates and their Sublicensees of Products (other than Net Sales of Co-Funded Products in the Co-Funded Territory) and Other Biogen Idec Products (excluding for purposes hereof Net Sales of any Non-Kinase Other Biogen Idec Product), ("Royalty Products"), on a Royalty Product-by-Royalty Product basis, equal to the percentage of such Net Sales set forth below:

Annual Net Sales	**Royalty on Net Sales**
Portion of Annual Net Sales of such Royalty Product up to ${ * }:	{ * }%
Portion of Annual Net Sales of such Royalty Product between ${ * } and ${ * }:	{ * }%
Portion of Annual Net Sales of such Royalty Product between ${ * } and ${ * }:	{ * }%
Portion of Annual Net Sales of such Royalty Product over ${ * }:	{ * }%

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

For purposes of the foregoing and Section 7.5.2 below, "annual Net Sales" shall mean, for a particular Product, the worldwide Net Sales of such Product for the particular calendar year. In the event that in a calendar quarter portions of the worldwide Net Sales of a particular Product are subject to royalty obligations under both Sections 7.5.1 and 7.5.2, the applicable royalty rate under Section 7.5.2 shall be applied to worldwide Net Sales based on the proportion of worldwide Net Sales generated in the Co-Funded Territory.

7.5.2. Co-Funded Products.

(a) Subject to Section 7.5.2(b) and 7.5.2(c) and 7.5.3, Biogen Idec shall pay to Sunesis a royalty on annual Net Sales by Biogen Idec, its Affiliates and their Sublicensees of Co-Funded Products in the Co-Funded Territory, on a Co-Funded Product-by-Co-Funded Product basis, equal to the percentage of such Net Sales set forth below:

Annual Net Sales	**Royalty on Net Sales**
Portion of Annual Net Sales of such Co-Funded Product up to ${ * }:	{ * }%
Portion of Annual Net Sales of such Co-Funded Product between ${ * } and ${ * }:	{ * }%
Portion of Annual Net Sales of such Co-Funded Product between ${ * } and ${ * }:	{ * }%
Portion of Annual Net Sales of such Co-Funded Product over ${ * }:	{ * }%

(b) { * }

{ * }

7.5.3. Third Party Patents.

(a) If: (i) a Valid Claim of a Third Party should be in force in any country during the Term of this Agreement covering the practice of the Sunesis Core Technology, Licensed Pre-Existing Technology, Sunesis Collaboration Technology or Joint Collaboration Technology as licensed to Biogen Idec under Section 6.2.1 or Section 6.3.1 with respect to the manufacture, use or sale of any Collaboration Compound, (ii) it should prove in Biogen Idec's reasonable judgment, after consultation with Sunesis, impractical or impossible for Biogen Idec to commercialize such Collaboration Compound without obtaining a royalty bearing license from such Third Party under such Valid Claim in said country (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Biogen Idec under Section 6.2.1 or Section 6.3.1 with respect to such Collaboration Compound, then Biogen Idec shall be entitled to a credit against the royalty payments due under Section 7.5 with respect to the same Collaboration

Compound in such country of an amount equal to { * } of the royalty paid to such Third Party for such Collaboration Compound in such country, arising from the practice of such Sunesis Core Technology, Licensed Pre-Existing Technology, Sunesis Collaboration Technology or Joint Collaboration Technology with respect to the manufacture, use or sale of the Collaboration Compound in said country, with such credit not to exceed { * } of the royalty otherwise due under this Agreement for such Collaboration Compound in such country.

(b) If: (i) a Valid Claim of a Third Party should be in force in any country during the Term of this Agreement covering the practice of (A) the Joint Collaboration Technology as licensed to Sunesis under Section 6.3.2, or (B) the Biogen Idec Collaboration Technology, Joint Collaboration Technology or other intellectual property rights in existence and owned or controlled by Biogen Idec licensed to Sunesis under Section 6.2.4, in each case with respect to the manufacture, use or sale of any Collaboration Compound, (ii) it should prove in Sunesis' reasonable judgment, after consultation with Biogen Idec, impractical or impossible for Sunesis to commercialize such Collaboration Compound without obtaining a royalty bearing license from such Third Party under such Valid Claim in said country (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Sunesis under Section 6.2.4 or Section 6.3.2 with respect to such Collaboration Compound, then Sunesis shall be entitled to a credit against the royalty payments due under Section 7.5, 7.6.1, or 7.6.2 with respect to the same Collaboration Compound in such country of an amount equal to { * } of the royalty paid to such Third Party for such Collaboration Compound in such country, arising from the practice of the intellectual property described in (A) or (B) above with respect to the manufacture, use or sale of the Collaboration Compound in said country, with such credit not to exceed { * } of the royalty otherwise due under this Agreement for such Collaboration Compound in such country.

(c) If: (i) a Valid Claim of a Third Party should be in force in any country during the term of this Agreement covering the practice of the BIIB062 Technology as licensed to Sunesis under Section 6.4.1, (ii) it should prove in Sunesis' reasonable judgment, after consultation with Biogen Idec, impractical or impossible for Sunesis to commercialize BIIB062 without obtaining a royalty bearing license from such Third Party under such Valid Claim in said country (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Sunesis under Section 6.4.1, then Sunesis shall be entitled to a credit against the royalty payments due under Section 7.6.3 in such country of an amount equal to { * } of the royalty paid to such Third Party for BIIB062 in such country, arising from the practice of the intellectual property described in clause (i) of this Section with respect to the manufacture, use or sale of BIIB062 in said country, with such credit not to exceed { * } of the royalty otherwise due under this Agreement for BIIB062 in such country.

7.6. Royalties on Net Sales of Sunesis Products, Reverted Products, Non-Kinase Other Biogen Idec Products and BIIB062 Products.

7.6.1. Other Biogen Idec Products. Biogen Idec shall pay to Sunesis a royalty equal to { * } of Net Sales by Biogen Idec, its Affiliates and their Sublicensees of Non-Kinase Other Biogen Idec Products, provided that this Section 7.6.1 shall not apply to Net Sales of Kinase Other Biogen Idec Products, which Net Sales shall be governed by Section 7.5.1 above.

7.6.2. Sunesis Products.

(a) Sunesis shall pay Biogen Idec at a royalty rate equal to the royalty rate provided under Section 7.5.1 with respect to Net Sales of Reverted Products by Sunesis, its Affiliates and their Sublicensees.

(b) Subject to Section 7.6.2(a) above, Sunesis shall pay to Biogen Idec a royalty equal to { * } of Net Sales of Sunesis Products by Sunesis, its Affiliates and their Sublicensees.

7.6.3. BIIB062 Products. Sunesis shall pay Biogen Idec at a royalty rate equal to the royalty rate provided under Section 7.5.1 with respect to Net Sales of BIIB062 Product by Sunesis, its Affiliates and their Sublicensees.

7.7. Royalty Term. The royalties due pursuant to Section 7.5 and Section 7.6 above shall be payable on a country-by-country and product-by-product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last Valid Claim of the Sunesis Core Technology, the Licensed Pre-Existing Patents or the Joint Collaboration Patents (including the BIIB062 Patents) covering the sale or use of such Product, Sunesis Product, Reverted Product, Other Biogen Idec Product or BIIB062 Product, as applicable, in such country, or (ii) the tenth (10th) anniversary of the first commercial sale of such product in such country.

ARTICLE 8
PAYMENTS, BOOKS AND RECORDS

8.1. Royalty Reports and Payments. After the first sale of a product on which royalties are payable by a Party hereunder, such Party shall make quarterly written reports to the other Party within sixty (60) days after the end of each calendar quarter, stating in each such report, separately the number, description, and aggregate Net Sales, by territory, of each such Product, Other Biogen Idec Product, Reverted Product, Sunesis Product, BIIB062 Product or BIIB062 Reverted Product sold during the calendar quarter upon which a royalty is payable under Section 7.5 or Section 7.6 above, as applicable. Concurrently with the making of such reports, such Party shall pay to the other Party royalties due at the rates specified in Section 7.5 or Section 7.6 above, as applicable.

8.2. Payment Method. All payments due under this Agreement shall be made by bank wire transfer in immediately available funds to a bank account designated by the Party owed such payment. All payments hereunder shall be made in U.S. dollars. Any payments that are not paid on the date such payments are due under this Agreement shall bear interest to the extent permitted by applicable law at a rate equal to the 3-month LIBOR rate at the close of business on the date such payment is due, plus an additional { * } calculated on the number of days such payment is delinquent.

8.3. Place of Royalty Payment; Currency Conversion. The functional currency for accounting will be U.S. dollars. Except as the Parties otherwise mutually agree, for billing and reporting, Development Costs and Net Sales will be translated, if necessary, into U.S. dollars using the currency exchange rates quoted by Bloomberg Professional, a service of Bloomberg L.P., or in the event Bloomberg Professional is not available, then the Eastern U.S. edition of The Wall Street Journal on the last business day of the applicable calendar quarter.

8.4. Records; Inspection. Each Party shall keep, and shall ensure that its Affiliates keep, complete, true and accurate books of account and records for the purpose of determining the amounts payable under this Agreement. Such books and records shall be kept at the principal place of business of such Party, for at least three (3) years following the end of the calendar quarter to which they pertain. Such records will be open for inspection by a public accounting firm to whom the audited Party has no reasonable objection and subject to such accounting firm entering into a satisfactory confidentiality agreement, solely for the purpose of determining the payments to the other Party hereunder. Such inspections may be made no more than twice each calendar year, at reasonable times and on reasonable notice. Inspections conducted under this Section 8.4 shall be at the expense of the auditing Party, unless a variation or error producing an increase exceeding { * } percent ({ * }%) of the amount stated for the period covered by the inspection is established in the course of any such inspection, whereupon all reasonable costs relating to the inspection for such period and any unpaid or overpaid amounts that are discovered will be promptly paid or refunded by the appropriate Party, in each case together with interest noted in Section 8.2 thereon from the date such payments were due (if underpaid) or paid (if overpaid) .

8.5. Withholding Taxes. Each Party shall pay any and all taxes levied on account of amounts payable to it under this Agreement. If laws or regulations require that taxes be withheld, the paying Party will (i) deduct those taxes from the remittable payment, (ii) timely pay the taxes to the proper authority, and (iii) send proof of payment to the other Party within sixty (60) days following that payment.

ARTICLE 9
DILIGENCE

9.1. Co-Funded Product Diligence; Reports. Biogen Idec shall use Commercially Reasonable and Diligent Efforts to develop and commercialize Co-Funded Products within the Field. Biogen Idec agrees to keep Sunesis fully informed regarding all Co-Funded Development Plans and the research, development and commercialization activities with respect to each Co-Funded Product, including by providing Sunesis with reports at least quarterly regarding ongoing activities being undertaken with respect to Co-Funded Products. This Section 9.1 shall not limit other provisions of this Agreement that address the provision of information regarding Products.

9.2. Reversion of a Co-Funded Product. If Biogen Idec fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Co-Funded Product, and Biogen Idec shall continue to fail to use Commercially Reasonable and Diligent Efforts to develop and commercialize such Co-Funded Product for { * } days after written notice thereof from Sunesis, then such Co-Funded Product shall become a Reverted Product.

9.3. Diligence for a Reverted Product. Sunesis shall use Commercially Reasonable and Diligent Efforts to develop and commercialize each Reverted Product. Sunesis agrees to keep Biogen Idec fully informed regarding the development and commercialization activities with respect to each Reverted Product, including by providing Biogen Idec with reports at least quarterly regarding ongoing activities being undertaken with respect to Reverted Products.

9.4. Termination of a Reverted Product. If Sunesis fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Reverted Product, and Sunesis shall continue to fail to use Commercially Reasonable and Diligent Efforts to develop and commercialize such Reverted Product for { * } days after written notice thereof from Biogen Idec, then such Reverted Product shall cease to be a Reverted Product, and the licenses granted to Sunesis under Section 6.2.4 shall terminate with respect to Terminated Compounds incorporated in such Reverted Product. Thereafter, such Terminated Compounds shall be Target Selective Compounds and subject to Biogen Idec's licenses under Section 6.2 and obligations to pay royalties and milestones to Sunesis pursuant to Article 7. In addition, the terms set forth in Section 2 of Exhibit 3.5.1 shall apply to such Reverted Product.

9.5. BIIB062 Product Diligence; Reports. Sunesis shall use Commercially Reasonable and Diligent Efforts to develop and commercialize BIIB062 Products within the Oncology Field. Sunesis agrees to keep Biogen Idec fully informed regarding all development and commercialization activities with respect to each BIIB062 Product. Accordingly, Sunesis shall provide Biogen Idec with BIIB062 development reports at least { * } regarding the completed activities being undertaken with respect to the development of BIIB062 Products as well as the anticipated development activities to be undertaken in the subsequent { * }. On a country-by-country and BIIB062 Product-by-BIIB062 Product basis, upon the earlier of (i) one year prior to the anticipated first commercial sale of BIIB062 in a country (as reasonably determined by Sunesis) or (ii) Sunesis' submission of an NDA in such country for such BIIB062 Product, and on a semi-annual basis thereafter, Sunesis shall prepare and deliver to Biogen Idec a commercialization report, which report shall include a timeline for achieving first commercial sale, one-year financial projections for the commercial sale of the BIIB062 Product, and such other additional information as reasonably requested by Biogen Idec. This Section 9.5 shall not limit other provisions of this Agreement that address the provision of information regarding products other than BIIB062 Products.

ARTICLE 10
INTELLECTUAL PROPERTY

10.1. Ownership; Disclosure.

10.1.1. Collaboration Technology.

(a) [Reserved].

(b) Ownership of Compounds. All Synthesized Compounds and Collaboration Derivatives that are included in Joint Collaboration Know-How shall be jointly owned by the Parties, subject to the licenses granted under Article 6. However, ownership of any patents, patent applications and other intellectual property rights with respect to such compounds and other inventions made in the course of the OCA Research Program shall be as otherwise set forth in this Section 10.1.

(c) Sunesis Collaboration Technology. All right, title, and interest in and to the Sunesis Collaboration Technology shall be owned by Sunesis, subject to the licenses granted to Biogen Idec under Article 6.

(d) Biogen Idec Collaboration Technology. All right, title, and interest in and to the Biogen Idec Collaboration Technology shall be owned by Biogen Idec, subject to the licenses granted to Sunesis under Article 6.

(e) All Joint Collaboration Technology. All right, title and interest in and to (i) the Joint Collaboration Patents, and (ii) the Joint Collaboration Know-How shall be jointly owned by the Parties. Biogen Idec shall assign and hereby assigns to Sunesis a joint ownership interest in and to the Joint Collaboration Patents and the Joint Collaboration Know-How. Sunesis shall assign and hereby assigns to Biogen Idec a joint ownership interest in and to the Joint Collaboration Patents and the Joint Collaboration Know-How. Except as expressly provided in this Agreement, neither Party shall have any obligation to account to the other for profits, or to obtain any approval of the other Party to license, exploit or enforce the Joint Collaboration Technology, by reason of joint ownership thereof, and each Party hereby waives any right it may have under the laws of any jurisdiction to require any accounting or consent related thereto. It is understood and agreed that all Joint Collaboration Technology that is jointly owned pursuant to this Section 10.1.1(e) shall be subject to the licenses granted under Article 6.

(f) For the avoidance of doubt, to the extent a Joint Collaboration Patent discloses any use of an Excluded Compound, the composition of matter of which is separately owned by one Party, the other Party shall not have, merely as a result of its joint ownership of such Joint Collaboration Patent, any right, title or interest in or to such Excluded Compound.

10.1.2. Sunesis Core Technology. All right, title and interest in and to the Sunesis Core Technology, and in any improvements to Sunesis Core Technology (i) made using or derived from Sunesis Core Technology, and (ii) made by or under authority of either Party or its Affiliates during the Term of this Agreement, shall, as between the Parties, be owned solely by Sunesis. Biogen Idec hereby assigns to Sunesis all of its and its Affiliates rights in and to such inventions and improvements made using or derived from Sunesis Core Technology (including all patent and other intellectual property rights therein), subject to the licenses granted to Biogen Idec under Article 6.

10.1.3. Licensed Pre-Existing Technology. All right, title and interest in and to the Licensed Pre-Existing Technology shall, as between the Parties, remain owned solely by Sunesis, subject to the licenses granted to Biogen Idec under Article 6.

10.1.4. Disclosure.

(a) Each Party shall promptly disclose to the other, all inventions relating to Sunesis Collaboration Technology, Joint Collaboration Technology and Sunesis Core Technology conceived or reduced to practice (provided that such conception takes place after the ARCA Effective Date) in connection with this Agreement prior to the third (3rd) anniversary of the ARCA Effective Date.

(b) Each Party shall promptly disclose to the other, all inventions relating to BIIB062 Technology conceived or reduced to practice (provided that such conception takes place after the Effective Date) in connection with this Agreement.

10.2. Patent Prosecution.

10.2.1. Sunesis Core Technology. Sunesis shall have the right to control the Prosecution of the Sunesis Collaboration Patents, Licensed Pre-Existing Patents and patent applications and patents directed to Sunesis Core Technology using patent counsel of Sunesis' choice, provided that such decisions made by Sunesis in the Prosecution of such patents and patent applications shall be reasonable and Sunesis shall employ reasonable efforts not to substantially negatively impact Biogen Idec's rights hereunder.

10.2.2. Collaboration Patents other than the BIIB062 Patents. Biogen Idec shall have the first right, using in-house or outside legal counsel selected by Biogen Idec and, subject to approval, not to be unreasonably withheld by Sunesis, to Prosecute Collaboration Patents (other than the BIIB062 Patents and progeny thereof) throughout the world. Biogen Idec shall: (a) ensure that Sunesis receives copies of all correspondence between Biogen Idec and/or outside legal counsel and/or any governmental offices relating to such Prosecution of such Collaboration Patents, (b) timely consult with Sunesis regarding all substantive matters associated with such activities, (c) use reasonable efforts to periodically advise Sunesis on such activities and to respond to any reasonable inquiries Sunesis may from time to time raise in respect of such activities, and (d) not substantially negatively impact Sunesis' rights under such Collaboration Patents.

10.2.3. BIIB062 Patents. Sunesis shall have the first right, using in-house or outside legal counsel selected by Sunesis and, subject to approval, not to be unreasonably withheld by Biogen Idec, to Prosecute BIIB062 Patents throughout the world. Sunesis shall: (a) ensure that Biogen Idec receives copies of all correspondence between Sunesis and/or outside legal counsel and/or any governmental offices relating to such Prosecution of BIIB062 Patents for Biogen Idec's prior review, (b) timely consult with Biogen Idec regarding all substantive matters associated with such activities, (c) use reasonable efforts to periodically advise Biogen Idec on such activities and to respond to any reasonable inquiries Biogen Idec may from time to time raise in respect of such activities, (d) not seek to use the BIIB062 Patents to pursue non-BIIB062 subject matter, except to the extent reasonably necessary to obtain a Valid Claim covering BIIB062 or BIIB062 Products, and (e) not substantially negatively impact Biogen Idec's rights under the BIIB062 Patents. Notwithstanding the foregoing, Biogen Idec shall have the sole and exclusive right, at its own expense, to Prosecute any divisionals, continuations, or continuations-in-part of the BIIB062 Patents whose claims do not cover the use of BIIB062 in the Oncology Field, using the counsel that is mutually agreed upon by the Parties under this Section and under the conditions set forth for Prosecution by Sunesis in this Section, *mutatis mutandis*.

10.2.4. Prosecution Costs.

(a) During the Term of this Agreement, all costs associated with Prosecuting (i) the Sunesis Collaboration Patents, Licensed Pre-Existing Patents and patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis; and (ii) the Biogen Idec Collaboration Patents and Joint Collaboration patents (other than the BIIB062 Patents) shall be borne by Biogen Idec.

(b) During the Term of this Agreement, all costs associated with Prosecuting the BIIB062 Patents shall be borne by Sunesis (unless and until such time as the BIIB062 Product becomes a BIIB062 Reverted Product); provided, however, that Biogen Idec shall be solely responsible for all costs associated with Prosecuting all of the divisionals, continuations, or continuations-in-part that Biogen Idec is permitted to file pursuant to Section 10.2.3.

10.2.5. Cooperation. Each Party will cooperate fully with the other Party and provide all information and data, and sign any documents, reasonably necessary and requested by the other Party for the purpose of Prosecuting patent applications and patents pursuant to this Section 10.2.

10.2.6. Abandonment. Either Party may elect to decline to file or, having filed, decline to further Prosecute any Collaboration Patents or BIIB062 Patents for which they have been granted final decision making authority under Section 10.2.2 and 10.2.3 above and to which the other Party has received a license under the terms of this Agreement. In the event that a Party declines to file or, having filed, declines to further Prosecute any such pending patent rights, then such abandoning Party shall provide the other Party with written notice thereof prior to the expiration of any deadline, without considering any possible extensions thereof, relating to such activities, but in any event at least thirty five (35) business days prior notice. In such circumstances the non-abandoning Party shall have the right to decide, with reason and with written notice at least thirty (30) business days prior to the deadline, that such abandoning Party should continue to file or Prosecute such patent rights. The abandoning Party shall then have the option to decide, with at least twenty (20) business days' notice to the non-abandoning Party to: (i) continue to Prosecute such patent rights at its cost and expense, or (ii) allow the non-abandoning Party to Prosecute such patent rights at its own cost and expense using counsel of its own choice. In the event that the abandoning Party elects option (ii), then the abandoning Party shall cooperate with the other Party to promptly transfer relevant Prosecution materials to the other Party. It is understood and agreed that transfer of Prosecution of particular patent rights pursuant to subsection (ii) above shall not affect the ownership of patent rights or licenses otherwise provided in this Agreement.

10.2.7. To the extent that Biogen Idec elects to decline to file or, having filed, decline to further Prosecute or enforce any patent applications or patents in Licensed Patent Rights (as such term is defined in the Millennium-Sunesis-Biogen Idec Agreement) which are not Collaboration Technology, Biogen Idec shall provide Sunesis with notice and the opportunity to file or Prosecute and enforce such patent rights pursuant to the provisions of Section 10.2.6 and enforce such patent rights pursuant to the provisions of Section 10.3.2.

10.3. Enforcement.

10.3.1. Notice. In the event a Party becomes aware of any actual or potential infringement or misappropriation of the Sunesis Collaboration Technology or Joint Collaboration Technology, in each case other than the BIIB062 Technology (a "Subject Infringement"), such Party shall notify the other Party. In the event a Party becomes aware of any actual or potential infringement or misappropriation of the BIIB062 Technology (a "BIIB062 Infringement"), such Party shall notify the other Party.

10.3.2. Biogen Idec. Subject to the terms of this Section 10.3.2, Biogen Idec shall have the sole right, but not the obligation, to take legal action to enforce and defend against Subject Infringements by Third Parties at its sole cost and expense, to the extent such Subject Infringement is within the field of use of Biogen Idec's exclusive license under Section 6.2.1 above. If, within six (6) months following a request by Sunesis to do so, Biogen Idec fails to take such action to enforce the Sunesis Collaboration Patents or Joint Collaboration Patents with respect to a Subject Infringement, Sunesis or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action. In addition, Biogen Idec shall have the sole right, but not the obligation, to take legal action to enforce and defend any actual or potential infringement or misappropriation of the Biogen Idec Collaboration Technology.

10.3.3. Sunesis. To the extent a Subject Infringement is not covered by Section 10.3.2 above, Sunesis (or its designee) shall have the initial right, but not the obligation, to take reasonable legal action to enforce and defend against such Subject Infringements by Third Parties at its sole cost and expense. If, within six (6) months following a request by Biogen Idec to do so, Sunesis fails to take such action to enforce the Sunesis Collaboration Patents or Joint Collaboration Patents with respect to such Subject Infringement, and the Subject Infringement is in a field not licensed exclusively to Sunesis hereunder, Biogen Idec or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

10.3.4. BIIB062 Enforcement Rights. For so long as the BIIB062 Exclusive License is in effect, Sunesis shall have the initial right, but not the obligation, to take reasonable legal action to enforce and defend the BIIB062 Technology against BIIB062 Infringements by Third Parties at its sole cost and expense. If, within six (6) months following a request by Biogen Idec to do so, Sunesis fails to take such action to enforce the BIIB062 Patents with respect to such BIIB062 Infringement, Biogen Idec or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action. To the extent that Biogen Idec has an exclusive license to BIIB062 Reverted Products under Section 6.4.4 Biogen Idec shall have the sole right, but not the obligation, to take legal action to enforce and defend against Subject Infringements by Third Parties at its sole cost and expense.

10.3.5. Cooperation; Costs and Recoveries. If a Party (the "Controlling Party") brings an action with respect to a Subject Infringement or BIIB062 Infringement in accordance with this Section 10.3 (an "Infringement Action"), then the other Party (the "Cooperating Party") shall cooperate as reasonably requested, at such Controlling Party's expense, in the pursuit of such Infringement Action, including if necessary by joining as a nominal Party to the Infringement Action. In any case, the Cooperating Party shall have the right, even if not required to be joined, to participate in such Infringement Action with its own counsel at its own expense. The costs and expenses of the Infringement Action shall be the responsibility of the Controlling Party, and any damages or other monetary rewards or settlement payments actually received and retained by the Controlling Party shall first be applied to reimburse the Controlling Party's out-of-pocket expenses directly attributed to the Infringement Action, then the other Party's out-of-pocket expenses directly attributed to the Infringement Action, and the remainder shall be shared as follows: { * }.

ARTICLE 11
CONFIDENTIALITY

11.1. Confidentiality. During the Term of this Agreement and for a period of five (5) years following the expiration or earlier termination hereof, each Party shall maintain in confidence the Confidential Information of the other Party, shall not use or grant the use of the Confidential Information of the other Party except as expressly permitted hereby, and shall not disclose the Confidential Information of the other Party (in each case, irrespective of whether such Confidential Information is also the Confidential Information of the receiving Party), except (i) on a need-to-know basis to such Party's directors, officers and employees, (ii) to such Party's consultants performing work contemplated by the Agreement, and to any bona fide subcontractor performing work for such Party hereunder, or (iii) to the extent such disclosure is reasonably necessary in connection with such Party's activities under rights and licenses expressly authorized by this Agreement (including the permitted Sublicensees). To the extent that disclosure to any person is authorized by this Agreement, prior to disclosure, a Party shall obtain written agreement of such person to hold in confidence and not disclose, use or grant the use of the Confidential Information of the other Party except as expressly permitted under this Agreement. Each Party shall notify the other Party promptly upon discovery of any unauthorized use or disclosure of the other Party's Confidential Information. Notwithstanding the foregoing, the exceptions set forth in (i), (ii) and (iii) above shall apply to disclosure by Sunesis of Confidential Information of Biogen Idec that is specifically related to the Collaboration Target (including without limitation { * } that are Confidential Information of such other Party) solely to the extent such disclosure is necessary for Sunesis and its employees, consultants and subcontractors to perform the obligations of the Parties hereunder. In addition, the exceptions set forth in (i), (ii) and (iii) above shall not apply to disclosure by Biogen Idec of Confidential Information of Sunesis that is specifically related to a Sunesis Target.

11.2. Permitted Use and Disclosures. The confidentiality obligations under this Article 11 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 (to the extent not prohibited by law or court order), and consult with the other Party with respect to such disclosure to the extent reasonably protectable and provide the other party reasonable opportunity to object to any such disclosure or to request confidential treatment thereof. Notwithstanding the provisions of this Section, either Party may, to the extent necessary, disclose Confidential Information of the other Party, to any governmental or regulatory authority in connection with the development of a product which it has the right to develop under this Agreement.

11.3. Nondisclosure of Terms. Each of the Parties hereto agrees not to disclose the financial terms of this Agreement, to any Third Party without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, except to such Party's attorneys, advisors, investors, potential bona fide collaborators and Sublicensees, and others on a need to know basis under circumstances that reasonably protect the confidentiality thereof, or to the extent required by law (and with appropriate requests made for confidential treatment),

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

including filings required to made by law with the Securities and Exchange Commission, or any national securities exchange. Notwithstanding the foregoing, (i) prior to execution of the OCA, the Parties have agreed upon the substance of information that can be used to describe the terms and conditions of this transaction, and each Party may disclose such information, as modified by mutual written agreement of the Parties, without the consent of the other Party; and (ii) prior to the issuance of a press release that discloses the execution of this Agreement and/or the existence of the BTK Target, the Parties shall agree upon the form of such press release.

11.4. Publication in Connection with the OCA Research Program. Any manuscript by Sunesis or Biogen Idec on subject matter in connection with the OCA Research Program to be published or publicly disclosed, shall be subject to the prior review of the other Party at least thirty (30) days prior to submission. Further, to avoid loss of patent rights as a result of premature public disclosure of patentable information, the receiving Party shall notify the disclosing Party in writing within thirty (30) days after receipt of any disclosure whether the receiving Party desires to file a patent application on any invention disclosed in such scientific results. In the event that the receiving Party desires to file such a patent application, the disclosing Party shall withhold publication or disclosure of such scientific results until the earlier of (i) a patent application is filed thereon, (ii) the Parties determine after consultation that no patentable invention exists, or (iii) ninety (90) days after receipt by the disclosing Party of the receiving Party's written notice of the receiving Party's desire to file such patent application. Further, if such scientific results contain the information of the other Party that is subject to use and nondisclosure restrictions under this Article 11, the publishing Party agrees to remove such information from the proposed publication or disclosure. Following the filing of any patent application within the Joint Collaboration Technology, in the period prior to the publication of such a patent application, neither Party shall make any written public disclosure regarding any invention claimed in such patent application without the prior consent of the other Party.

11.5. Publication in Connection with { * }. Notwithstanding Section 11.4, with respect to manuscripts that are related to the discovery and target of { * }, Biogen shall provide Sunesis a copy of each proposed manuscript at least { * } days prior to submission; provided, however, that Biogen shall be under no obligation to withhold publication or disclosure of { * }-related scientific results contained therein or otherwise modify or remove such information from the proposed manuscript.

11.6. Publication in Connection with the BIIB062. Notwithstanding Section 11.4, Sunesis shall not submit any manuscript or publications that are related to BIIB062 without the prior written consent of Biogen Idec, such consent not to be unreasonably withheld or delayed.

ARTICLE 12
REPRESENTATIONS AND WARRANTIES

12.1. Warranty. Each Party represents and warrants on its own behalf and on behalf of its Affiliates that:

(i) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

(ii) It has the legal power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(iii) This Agreement is a legal and valid obligation binding upon it and enforceable in accordance with its terms.

(iv) All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such Party in connection with this Agreement have been obtained.

(v) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws, regulations or orders of governmental bodies; and (b) do not conflict with, or constitute a default under, any contractual obligation of such Party. Neither Party will enter into any agreement with any Third Party that conflicts with the terms of this Agreement.

12.2. Additional Warranty of Sunesis. Sunesis represents and warrants that, to the best of its knowledge as of August 25, 2004, the practice of the Sunesis Core Technology is not generally dominated by patent rights of a Third Party. As of the Effective Date, Sunesis has not received any notice of infringement from any Third Party relating to the Sunesis Core Technology or any notice challenging the validity of the Sunesis Core Technology nor does Sunesis have any knowledge of any infringement relating to any of the Sunesis Core Technology. It is understood that Sunesis makes no representation or warranty with respect to any patent rights of Third Parties relating to the Collaboration Target.

12.3. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COLLABORATION TECHNOLOGY, LICENSED PRE-EXISTING TECHNOLOGY, SUNESIS CORE TECHNOLOGY, COLLABORATION COMPOUNDS, BIIB062, OTHER COMPOUNDS, OR CONFIDENTIAL INFORMATION, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF ANY COLLABORATION TECHNOLOGY, PATENTED OR UNPATENTED, OR NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

ARTICLE 13
INDEMNIFICATION

13.1. Biogen Idec. Biogen Idec shall indemnify, defend and hold harmless Sunesis and its Affiliates and their respective directors, officers, employees, agents and their respective successors, heirs and assigns from and against any losses, costs, claims, damages, liabilities or expense (including reasonable attorneys' and professional fees and other expenses of litigation) (collectively, "Liabilities") resulting from any claims, demands, actions or other proceedings by

any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Products, Co-Funded Products, BIIB062 Reverted Products or Other Biogen Idec Products by Biogen Idec or its Affiliates or Sublicensees or other designees; (ii) the breach by Biogen Idec of the representations and warranties made in this Agreement; or (iii) the negligence or intentional misconduct of Biogen Idec or any of its agents or employees or failure of Biogen Idec or any of its agents or employees to comply with applicable laws and regulations; except, in each case, to the extent such Liabilities result from a material breach of this Agreement by Sunesis, negligence or intentional misconduct of Sunesis or any of its agents or employees (including sales representatives involved in co-promoting any Co-Promoted Product) or failure of Sunesis or any of its employees or agents to comply with applicable laws or regulations.

13.2. Sunesis. Sunesis agrees to indemnify, defend and hold harmless Biogen Idec and its Affiliates and their respective directors, officers, employees, agents and their respective heirs and assigns from and against any Liabilities resulting from any claims, demands, actions or other proceedings by any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Sunesis Products, Co-Promoted Products, BIIB062 Products or Reverted Products by Sunesis or its Affiliates or Sublicensees or other designees, (ii) the breach by Sunesis of its representations and warranties made in this Agreement, or (iii) the negligence or intentional misconduct of Sunesis or any of its agents or employees or failure of Sunesis or any of its agents or employees to comply with applicable laws and regulations; except, in each case, to the extent such Liabilities result from a breach of this Agreement by Biogen Idec, negligence or intentional misconduct of Biogen Idec or any of its agents or employees (including sales representatives involved in co-promoting any Co-Promoted Product) or failure of Biogen Idec or any of its employees or agents to comply with applicable laws or regulations.

13.3. Procedure. If a Party (the “Indemnitee”) intends to claim indemnification under this ARTICLE 13, it shall promptly notify the other Party (the “Indemnitor”) in writing of any claim, demand, action or other proceeding for which the Indemnitee intends to claim such indemnification, and the Indemnitor shall have the right to participate in, and, to the extent the Indemnitor so desires, to assume the defense thereof with counsel mutually satisfactory to the Parties; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between the Indemnitee and any other Party represented by such counsel in such proceeding. The obligations of this Article 13 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve the Indemnitor of any obligation to the Indemnitee under this Article 13. The Indemnitee, its employees and agents, shall reasonably cooperate with the Indemnitor and its legal representatives in the investigation of any claim, demand, action or other proceeding covered by this Article 13.

ARTICLE 14
TERM AND TERMINATION

14.1. Term. The Term of this Agreement shall commence on the Effective Date, and shall continue in full force and effect on a country-by-country, Product-by-Product, Sunesis Product-by-Sunesis Product, Other Biogen Idec Product-by-Other Biogen Idec Product, BIIB062 Product-by-BIIB062 Product, and Reverted Product-by-Reverted Product basis until expiration of both Parties' royalty payment obligations in such country with respect to such Products, Sunesis Products, Other Biogen Idec Products, BIIB062 Products or Reverted Products, as applicable, in each case unless earlier terminated as provided in this Article 14 (the "Term").

14.2. Termination for Breach. Either Party to this Agreement may terminate this Agreement in the event the other Party hereto shall have materially breached or defaulted in the performance of any of its material obligations hereunder, and such default shall have continued for sixty (60) days after written notice thereof was provided to the breaching Party by the non-breaching Party. Any termination shall become effective at the end of such sixty (60) day period unless the breaching Party has cured any such breach or default prior to the expiration of the sixty (60) day period. Notwithstanding the foregoing, failure by either Party to use Commercially Reasonable and Diligent Efforts with respect to the development and commercialization of a Product, Other Biogen Idec Product, Sunesis Product, BIIB062 Product, or Reverted Product shall not be deemed a breach of this Agreement.

14.3. Termination for Bankruptcy. Either Party hereto shall have the right to terminate this Agreement forthwith by written notice to the other Party (i) if the other Party is declared insolvent or bankrupt by a court of competent jurisdiction, (ii) if a voluntary or involuntary petition in bankruptcy is filed in any court of competent jurisdiction against the other Party and such petition is not dismissed within ninety (90) days after filing, (iii) if the other Party shall make or execute an assignment of substantially all of its assets for the benefit of creditors, or (iv) substantially all of the assets of such other Party are seized or attached and not released within ninety (90) days thereafter. All rights and licenses granted under this Agreement by one Party to the other Party are, and shall otherwise be deemed 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.

14.4. Termination of Main Terms for Convenience by Biogen Idec. At any time, by providing Sunesis written notice at least ninety (90) days in advance, and provided that Biogen Idec is not in breach of the Main Terms, Biogen Idec will have the right to terminate the provisions of this Agreement that are included in the Main Terms. For the avoidance of doubt, upon termination of the Main Terms pursuant to this Section 14.4, the BIIB062 Terms shall remain in full force and effect.

14.5. Termination of BIIB062 Terms for Convenience by Sunesis. At any time, by providing Biogen Idec written notice at least ninety (90) days in advance, and provided that Sunesis is not in breach of the BIIB062 Terms, Sunesis will have the right to terminate the provisions of this Agreement that are included in the BIIB062 Terms. For the avoidance of doubt, upon termination of the BIIB062 Terms pursuant to this Section 14.5, the Main Terms shall remain in full force and effect.

14.6. Termination of BIIB062 Terms by Biogen. In the event that Sunesis, its Affiliates and their Sublicensees have all failed to initiate a Phase I clinical trial for a BIIB062 Product in a Major Market by December 31, 2016 (the "Phase I Date"), then Biogen shall have the right, after the Phase I Date, and upon written notice to Sunesis, to immediately terminate the provisions of this Agreement that are included in the BIIB062 Terms. For purposes of this Section 14.6, a Phase I clinical trial shall be deemed initiated upon the first dosing of the first research subject. For the avoidance of doubt, upon termination of the BIIB062 Terms pursuant to this Section 14.6, the Main Terms shall remain in full force and effect.

14.7. Effect of Breach or Termination.

14.7.1. Accrued Rights and Obligations. Termination of this Agreement, the Main Terms or the BIIB062 Terms for any reason 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.

14.7.2. Termination by Biogen Idec for Breach or Bankruptcy of Sunesis. In the event of termination of this Agreement by Biogen Idec pursuant to Section 14.2 due to Sunesis' breach or by Biogen Idec pursuant to Section 14.3 for Sunesis' bankruptcy, all BIIB062 and BIIB062 Products shall be delivered to Biogen Idec at Biogen Idec's cost, and in addition to those provisions surviving under Section 14.11, the following shall apply:

(a) Sections 3.5.2 (BIIB062 Reverted Products), Section 6.2.4 (Reverted Products) (but only with respect to Reverted Products in existence as of the effective date of such termination); Section 6.4.4 (BIIB062 Reverted Products License); 7.4 (Development Milestones); 7.5 (Royalties on Annual Net Sales of Products); 7.6 (Royalties on Net Sales of Sunesis Products, Non-Kinase Other Biogen Idec Products and BIIB062 Products) (except that any royalties payable by Biogen Idec under Sections 7.3, 7.4, 7.5, and 7.6, commencing upon such termination and continuing thereafter, shall be reduced by fifty percent (50%)); 7.7 (Royalty Term); ARTICLE 10 (Intellectual Property)(other than Sections 10.1.4, 10.2.2, 10.2.3, 10.2.4 and the first two sentences of Section 10.3.4, which shall terminate); Exhibit 3.5.1 (Reverted Products) (but only with respect to such Reverted Products in existence as of the effective date of such termination); and Exhibit 3.5.2 (BIIB062 Reverted Products) shall survive.

(b) Biogen Idec shall control Prosecution of all Collaboration Patents (including Sunesis, Biogen Idec and Joint) at its own expense. Sunesis shall be given the opportunity to review Biogen Idec's activities and reasonably consult with Biogen Idec with respect to Sunesis Collaboration Patents and Joint Collaboration Patents, and Biogen Idec shall

in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Biogen Idec shall keep Sunesis reasonably informed as to the status of such patent matters, including without limitation by providing Sunesis with (i) copies of any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which Biogen Idec receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, Prosecuting, issuing and maintaining the Licensed Pre-Existing Patents and patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis. In conducting the Prosecution activities described in this Section 14.7.2(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

(c) Sunesis' rights and obligations under Section 3.2.3 shall survive with respect to Co-Funded Products for which Sunesis has exercised its Co-Funding Option prior to such termination, and Biogen Idec shall pay royalties on any such Co-Funded Products in accordance with Section 7.5.2. Biogen Idec shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis' Co-Funding Option with respect to future Products shall terminate, as will Article 4, as well as Sunesis' right to participate in the JDC under Section 5.4 and any Product Teams under Section 3.3.

14.7.3. Termination by Sunesis for Breach or Bankruptcy of Biogen Idec. In the event of termination of this Agreement by Sunesis pursuant to Section 14.2 due to Biogen Idec's breach or by Sunesis pursuant to Section 14.3 for Biogen Idec's bankruptcy, the BIIB062 Terms shall remain in full force and effect, all Collaboration Compounds in Reverted Products shall be delivered to Sunesis at Sunesis' cost, and in addition to those provisions surviving under Section 14.11, the following shall apply:

(a) Sections 3.5.1 (Reverted Products); 6.2.4 (Reverted Products); 7.4 (Development Milestones); 7.5 (Royalties on Annual Net Sales of Products); 7.6 (Royalties on Net Sales of Sunesis Products and Other Biogen Idec Products); (except that any royalties payable by Sunesis under Sections 7.5 and 7.6.2, commencing upon such termination and continuing thereafter, shall be reduced by fifty percent (50%)); 7.7 (Royalty Term); ARTICLE 9 (Diligence); ARTICLE 10 (Intellectual Property)(other than Sections 10.1.4(a), 10.2.2, 10.2.3, and 10.2.4(a) which shall terminate); and Exhibit 3.5.1 (Reverted Products) shall survive.

(b) Biogen Idec shall control Prosecution of all Biogen Idec Collaboration Patents and Joint Collaboration Patents at its own expense. Sunesis shall control Prosecution of all Sunesis Collaboration Patents at its own expense. Sunesis shall be given the opportunity to review Biogen Idec's activities and reasonably consult with Biogen Idec with respect to Sunesis Collaboration Patents and Joint Collaboration Patents, and Biogen Idec shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Biogen Idec shall keep Sunesis reasonably informed as to the status of such patent

matters, including without limitation by providing Sunesis with (i) copies of any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which Biogen Idec receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, Prosecuting, issuing and maintaining the Licensed Pre-Existing Patents and patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis. In conducting the Prosecution activities described in this Section 14.7.3(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

(c) Biogen Idec's rights with respect to Co-Funded Products and the Co-Funded Option shall be as follows:

(i) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Biogen Idec has not obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, such Co-Funded Product shall become a Reverted Product in accordance with Section 3.5.1 and Exhibit 3.5.1 and Sunesis shall thereafter pay royalties to Biogen Idec on Net Sales of such Reverted Product in accordance with Section 7.5.1.

(ii) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Biogen Idec has obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, Sunesis' rights and obligations under Section 3.2.3 shall survive, and Biogen Idec shall pay royalties on any such Co-Funded Products in accordance with Section 7.5.2. Biogen Idec shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis' Co-Funding Option with respect to future Products shall terminate, as will Article 4, as well as Sunesis' right to participate in the JDC under Section 5.4 and any Product Teams under Section 3.3.

(iii) Sunesis' Co-Funding Option under Section 3.2 with respect to future Products shall continue (i.e. with respect to Products that are not Co-Funded Products as of the effective date of such termination), provided that Biogen Idec shall no longer be obligated to provide for each Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice pursuant to Section 3.2.1. Biogen Idec shall, however, provide Sunesis with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 3.2.1, and shall provide reasonable cooperation to Sunesis in evaluating such Product and the post Phase I Development Costs related thereto, including consulting with Sunesis in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

14.8. Termination of the Main Terms by Biogen Idec for Convenience. In the event of termination of the Main Terms by Biogen Idec pursuant to Section 14.4, the BIIB062 Terms shall remain in full force and effect, all Collaboration Compounds in Reverted Products shall be delivered to Sunesis at Sunesis' cost, and in addition to those provisions surviving under Section 14.11, the following shall apply:

14.8.1. Articles 3 (Product Development); 4 (Product Commercialization); 5 (Management) (other than Section 5.3, which shall terminate); 6.2.4 (Reverted Products); 7.4 (Development Milestones); 7.5 (Royalties on Annual Net Sales of Products); 7.6 (Royalties on Net Sales of Sunesis Products, Reverted Products, Non-Kinase Other Biogen Idec Products and BIIB062 Products) (except that any royalties payable by Sunesis under Sections 7.5 and 7.6.2, commencing upon such termination and continuing thereafter, shall be reduced by fifty percent (50%)); Section 7.7 (Royalty Term); ARTICLE 9 (Diligence); ARTICLE 10 (Intellectual Property)(other than Sections 10.1.4(a), 10.2.2 and 10.2.4(a), which shall terminate); and Exhibit 3.5.1 (Reverted Products) shall survive.

14.8.2. Biogen Idec shall control Prosecution of all Biogen Idec Collaboration Patents and Joint Collaboration Patents at its own expense. Sunesis shall control Prosecution of all Sunesis Collaboration Patents at its own expense. Sunesis shall be given the opportunity to review Biogen Idec's activities and provide input with respect to Sunesis Collaboration Patents and Joint Collaboration Patents, and Biogen Idec shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Biogen Idec shall keep Sunesis reasonably informed as to the status of such patent matters, including without limitation by providing Sunesis with (i) copies of any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which Biogen Idec receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to Sunesis Collaboration Patents and Joint Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, Prosecuting, issuing and maintaining the Licensed Pre-Existing Patents and patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis. In conducting the Prosecution activities described in this Section 14.8.2, each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

14.8.3. Biogen Idec's rights with respect to Co-Funded Products and the Co-Funded Option shall be as follows:

(a) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Biogen Idec has not obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, such Co-Funded Product shall become a Reverted Product in accordance with Section 3.5.1 and Exhibit 3.5.1 and Sunesis shall thereafter pay royalties to Biogen Idec on Net Sales of such Reverted Product in accordance with Section 7.5.1.

(b) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Biogen Idec has obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, Sunesis' rights and obligations under Section 3.2.3 shall survive, and Biogen Idec shall pay royalties on any such Co-Funded Products in accordance with Section 7.5.2. Biogen Idec shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis' Co-Funding Option with respect to future Products shall terminate, as will Article 4, as well as Sunesis' right to participate in the JDC under Section 5.4 and any Product Teams under Section 3.3.

(c) Sunesis' Co-Funding Option under Section 3.2 with respect to future Products shall continue (i.e. with respect to Products that are not Co-Funded Products as of the effective date of such termination), provided that Biogen Idec shall no longer be obligated to provide for each Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice pursuant to Section 3.2.1. Biogen Idec shall, however, provide Sunesis with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 3.2.1, and shall provide reasonable cooperation to Sunesis in evaluating such Product and the post Phase I Development Costs related thereto, including consulting with Sunesis in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

14.9. Termination of BIIB062 Terms by Either Party. In the event of termination of the BIIB062 Terms, either by Sunesis pursuant to Section 14.5, or by Biogen Idec pursuant to Section 14.6, the Main Terms shall remain is full force and effect, all BIIB062 and BIIB062 Products shall be delivered to Biogen Idec at Biogen Idec's cost, and with respect to BIIB062, in addition to those provisions surviving under Section 14.11, the following provisions shall also survive: Section 3.4 (Regulatory Matters); Section 3.5.2 (BIIB062 Product Reversion); Section 6.4.4 (BIIB062 Reverted Product License); Section 7.4 (Development Milestones); 7.5 (Royalties on Annual Net Sales of Products); 7.6 (Royalties on Net Sales of Sunesis Products, Reverted Products, Non-Kinase Other Biogen Idec Products and BIIB062 Products); Section 7.7 (Royalty Term); and ARTICLE 10 (Intellectual Property) (other than Sections 10.1.4(b), 10.2.3, 10.2.4(b) and the first two sentences of Section 10.3.4, which, to the extent they apply to BIIB062, shall terminate with respect to BIIB062);

14.10. Transition of Information and Materials. With respect to a Party's obligation to transition Collaboration Technology, information and material with respect to a particular compound, each Party shall cooperate fully (and cause its Affiliates to cooperate fully) with the other Party to facilitate a smooth and prompt transition of Collaboration Technology, information and materials that are necessary or useful for the receiving Party to further research, develop, or otherwise exploit such target and compounds in the Field.

14.11. Survival Sections. In addition to the provisions set forth in Sections 14.7.2, 14.7.3, 14.8 and 14.9 above, as applicable, the following provisions shall survive the expiration or termination of this Agreement, the Main Terms or the BIIB062 Terms for any reason: Articles 1 (Definitions), 8 (Payments, Books and Records), 11 (Confidentiality), 12 (Representations and Warranties), 13 (Indemnification), 14 (Term and Termination), 15 (Dispute Resolution) and 16 (Miscellaneous); and Sections 6.2.1, 6.2.2 (Commercialization Licenses to Biogen Idec for Target Selective Compounds); 6.3 (Other Compounds); and 6.5.

ARTICLE 15
DISPUTE RESOLUTION

15.1. Escalation to Senior Executives. In the event of a dispute or matter of significant concern arises between the Parties, then at the request of either Party, the matter shall be escalated to a senior executive from each Party. Such senior executive shall be either the CEO of such Party, or another senior executive of such Party who both reports to the CEO and who has direct management responsibility for the matter in dispute. Upon such request, such senior executives shall make themselves reasonably available to meet, and shall meet either by telephone or if, specifically requested, in person, to attempt to resolve such matter, and shall thereafter continue to use good faith efforts to attempt to resolve such matter unless it becomes clear that the matter cannot be resolved by mutual agreement. Thereafter either Party may pursue such legal process as is otherwise available under applicable law, except as otherwise set forth in Section 5.1.4 above or Section 15.2 below.

15.2. Independent Scientific Verification of Certain Disputes.

15.2.1. Independent Measurements. In the event the Parties are unable to reach agreement regarding (i) whether or not a compound or product is Target Selective against the Collaboration Target, (ii) the IC50 of a particular "selected lead" as that term is defined in Section 1.72 above, or (iii) any other independently verifiable scientific determination or measurement, and the Parties have not resolved such dispute through good faith negotiations, such dispute will be resolved through performance of the relevant determination by an independent Third Party. The findings of such Third Party with respect to such dispute shall be binding on the Parties, and the costs of such testing shall be shared equally by the Parties.

15.2.2. [Reserved].

15.3. Injunctive Relief. This Article 15 shall not be construed to prohibit either Party from seeking preliminary or permanent injunctive relief, restraining order or degree of specific performance in any court of competent jurisdiction to the extent not prohibited by this Agreement. For avoidance of doubt, any such equitable remedies provided under this Article 15 shall be cumulative and not exclusive and are in addition to any other remedies, which either Party may have under this Agreement or applicable law.

15.4. Matters to Proceed to Court. Notwithstanding the foregoing, any dispute relating to the determination of validity of a Party's patents or other issues relating solely to a Party's intellectual property and any dispute asserting breach of this Agreement or of the representations and warranties made hereunder shall be submitted exclusively to the federal court in { * } and the Parties hereby consent to the jurisdiction and venue of such court.

ARTICLE 16
MISCELLANEOUS

16.1. Governing Laws. This Agreement and any dispute arising from the construction, performance or breach hereof shall be governed by and construed, and enforced in accordance with, the laws of the state of { * } without reference to conflicts of laws principles.

16.2. Waiver. It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

16.3. Assignment. This Agreement shall not be assignable by either Party without the written consent of the other Party hereto, except (i) either Party may assign this Agreement without such consent to its Affiliates, or to an entity that acquires all or substantially all of the business or assets of such Party whether by merger, reorganization, acquisition, sale, operation of law, or otherwise; provided, however, that the assignee shall agree in writing to be bound by the terms and conditions of this Agreement and (ii) Sunesis may assign its rights and obligations under the portion of this Agreement that constitutes the BIIB062 Terms without such consent to its Affiliates, or to an entity that acquires all or substantially all of the business or assets of Sunesis that relate to BIIB062 whether by merger, reorganization, acquisition, sale, operation of law, or otherwise; provided, however, that the assignee shall agree in writing to be bound by the terms and conditions of the BIIB062 Terms and such other terms of this Agreement as would be appropriate for such assignment.

16.4. Independent Contractors. The relationship of the Parties hereto is that of independent contractors. The Parties hereto are not deemed to be agents, partners or joint venturers of the others for any purpose as a result of this Agreement or the transactions contemplated thereby.

16.5. Compliance with Laws. In exercising their rights under this license, the Parties shall fully 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 license including, without limitation, those applicable to the discovery, development, manufacture, distribution, import and export and sale of Products pursuant to this Agreement.

16.6. Patent Marking. Biogen Idec agrees to mark and use reasonable efforts to make all its Sublicensees mark all Products and Other Biogen Idec Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of manufacture and sale thereof. Sunesis agrees to mark and use reasonable efforts to make its Sublicensees mark all Sunesis Products and BIIB062 Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of manufacture and sale thereof.

16.7. Notices. All notices, requests and other communications hereunder shall be in writing and shall be personally delivered or by registered or certified mail, return receipt requested, postage prepaid, in each case to the respective address specified below, or such other address as may be specified in writing to the other Parties hereto and shall be deemed to have been given upon receipt:

Sunesis: Sunesis Pharmaceuticals, Inc.
395 Oyster Point Boulevard, Suite 400
South San Francisco, California 94080
Attn: CEO

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

With a copy to:	Cooley LLP 3175 Hanover St. Palo Alto, California 94304-1050 Attn: Glen Sato
Biogen Idec	Biogen Idec MA Inc. 14 Cambridge Center Cambridge, Massachusetts 02142 Attn: Executive Vice President, Corporate Development
With a copy to:	Biogen Idec MA Inc. 14 Cambridge Center Cambridge, Massachusetts 02142 Attn: General Counsel

16.8. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect to the fullest extent permitted by law without said provision, and the Parties shall amend the Agreement to the extent feasible to lawfully include the substance of the excluded term to as fully as possible realize the intent of the Parties and their commercial bargain. If a Party seeks to avoid a provision of this Agreement by asserting that such provision is invalid, illegal or otherwise unenforceable, the other Party shall have the right to terminate this Agreement upon sixty (60) days' prior written notice to the asserting Party, unless such assertion is eliminated and cured within such sixty (60) day period. If Biogen Idec has sought to so avoid a provision of this Agreement, such termination shall be deemed a termination by Biogen Idec under Section 14.4 above, and if Sunesis has sought such an avoidance, such termination shall be deemed a termination for breach by Sunesis under Section 14.2 above.

16.9. Advice of Counsel. Sunesis and Biogen Idec have each consulted counsel of their choice regarding this Agreement, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one Party or another and will be construed accordingly.

16.10. Performance Warranty. Each Party hereby warrants and guarantees the performance of any and all rights and obligations of this Agreement by its Affiliates and Sublicensees.

16.11. Complete Agreement. This Agreement with its Exhibits, constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements respecting the subject matter hereof, either written or oral, express or Biogen Idec-Sunesis Collaboration Agreement implied, shall be abrogated, canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and executed by the respective duly authorized representatives of Sunesis and Biogen Idec.

16.12. Headings. The captions to the several Sections and Articles hereof are not a part of this Agreement, but are included merely for convenience of reference and shall not affect its meaning or interpretation.

16.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized representatives and delivered in duplicate originals as of the Effective Date.

BIOGEN IDEC MA INC.

By: /s/ Douglas E. Williams
Name: Douglas E. Williams
Title: Executive Vice President, Research and Development

SUNESIS PHARMACEUTICALS, INC.

By: /s/ Eric Bjerkholt
Name: Eric Bjerkholt
Title: Chief Financial Officer

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EXHIBIT 1.6

BIIB062 PATENTS

{ * }

EXHIBIT 1.67

1. Sunesis Core Technology

Sunesis No.	Serial No.	Title	Status
SU-100	US 09/105,372	Methods for Rapidly Identifying Small Organic Molecule Ligands for Binding to Biological Target Molecules	Granted U.S. Patent No. 6,335,155
SU-100 D1C1	US 10/043,833	Methods for Rapidly Identifying Small Organic Molecule Ligands for Binding to Biological Target Molecules	Granted as US Patent No. 6,811,966
{ * }	{ * }	{ * }	{ * }
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{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT 1.72

BTK Assays

{ * }

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT 2.7.1

Phase II Drug Compounds

None.

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

EXHIBIT 3.5.1

Reverted Products

Section 1. Reversion of a Co-Funded Product to Sunesis.

1.1. Biogen Idec shall cooperate fully with Sunesis and shall provide Sunesis with all data, documentation, information and materials generated or used by Biogen Idec in the research, development, production or other exploitation of such Reverted Product, and Sunesis shall have the right to use and disclose such items.

1.2. To the extent not already terminated, the license granted to Biogen Idec under Section 6.2 shall terminate with respect to Collaboration Compounds incorporated in such Reverted Product. Thereafter, such Collaboration Compounds shall be deemed Terminated Compounds for the purposes of Section 6.2.4.

1.3. All right, title and interest in and to (i) all regulatory filings related to the Reverted Product, including without limitation all INDs, NDAs and all information and correspondence related thereto, and (ii) any trademarks specific to the Reverted Product shall be transferred and assigned to Sunesis.

1.4. Biogen Idec shall cooperate fully with Sunesis upon Sunesis' request to assign to Sunesis, or otherwise secure for Sunesis the benefits of, any arrangement between Biogen Idec and a Third Party related to the research, development, production or exploitation of such Reverted Product, including without limitation clinical research agreements, manufacturing and supply agreements and distribution agreements. { * }

1.5. Without limiting the foregoing, Biogen Idec shall use reasonable efforts to implement the provisions of this Exhibit 3.5.1 and to ensure orderly transition and uninterrupted research and development of the Reverted Product. Sunesis shall promptly reimburse Biogen Idec's reasonable out-of-pocket costs with respect to activities, services and materials provided by Biogen Idec under Section 1 of this Exhibit 3.5.1.

Section 2. Termination of a Reverted Product and Reversion to Biogen Idec.

2.1 Sunesis shall cooperate fully with Biogen Idec and shall provide Biogen Idec with all data, documentation, information and materials generated or used by Sunesis in the research, development, production or other exploitation of such Reverted Product, and Biogen Idec shall have the right to use and disclose such items.

2.2 All right, title and interest in and to (i) all regulatory filings related to such Reverted Product, including without limitation all INDs, NDAs and all information and correspondence related thereto, and (ii) any trademarks specific to the Reverted Product shall be transferred and assigned to Biogen Idec.

{ * } = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

2.3 Sunesis shall cooperate fully with Biogen Idec upon Biogen Idec's request to assign to Biogen Idec, or otherwise secure for Biogen Idec the benefits of, any arrangement between Sunesis and a Third Party related to the research, development, production or exploitation of such Reverted Product, including without limitation clinical research agreements, manufacturing and supply agreements and distribution agreements. { * }

2.4 Without limiting the foregoing, Sunesis shall use reasonable efforts to implement the provisions of this Section 9.4 and to ensure orderly transition and uninterrupted research and development of such Reverted Product. Biogen Idec shall promptly reimburse Sunesis' reasonable out-of-pocket costs with respect to activities, services and materials provided by Sunesis under Section 2 of this Exhibit 3.5.1.

EXHIBIT 3.5.2

BIIB062 Reverted Products

The terms of this Exhibit 3.5.2 shall have effect upon only the effective date of any such notice by Biogen Idec or termination recognized in Section 3.5.2 of the Agreement.

1.1. Sunesis shall cooperate fully with Biogen Idec and shall provide Biogen Idec with all data, documentation, information and materials generated or used by Sunesis in the development, production or other exploitation of BIIB062 and the BIIB062 Reverted Product, and Biogen Idec shall have the right to use and disclose such items.

1.2. The license granted to Sunesis under Section 6.4.1 shall terminate with respect to BIIB062 and the BIIB062 Reverted Product and the license granted to Biogen Idec under Section 6.4.4 shall commence in accordance with its terms. Additionally, the obligations and restrictions under Sections 6.4.2 and 6.4.3 shall cease to apply to Biogen Idec.

1.3. All right, title and interest in and to (i) all regulatory filings related to BIIB062 and the BIIB062 Reverted Product, including without limitation all INDs, NDAs and all information and correspondence related thereto, and (ii) any trademarks specific to the BIIB062 Reverted Product shall be transferred and assigned to Biogen Idec.

1.4. Sunesis shall cooperate fully with Biogen Idec upon Biogen Idec's request to assign to Biogen Idec, or otherwise secure for Biogen Idec the benefits of, any arrangement between Sunesis and a Third Party related to the development, production or exploitation of BIIB062 or the BIIB062 Reverted Product, including without limitation clinical research agreements, manufacturing and supply agreements and distribution agreements. { * }

1.5. Without limiting the foregoing, Sunesis shall use reasonable efforts to implement the provisions of this Exhibit 3.5.2 and to ensure orderly transition and uninterrupted development and commercialization of BIIB062 and the BIIB062 Reverted Product. Biogen Idec shall promptly reimburse Sunesis' reasonable out-of-pocket costs with respect to activities, services and materials provided by Sunesis under this Exhibit 3.5.2.

[*] = CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT, MARKED BY BRACKETS, IS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO RULE 24B-2 OF THE SECURITIES EXCHANGE ACT OF 1934, AS AMENDED.

EXHIBIT 10.47

AMENDED AND RESTATED LICENSE AGREEMENT

This AMENDED AND RESTATED LICENSE AGREEMENT (the "Agreement"), effective as of January 8, 2014 (the "Amendment Effective Date"), is made by and between Sunesis Pharmaceuticals, Inc., a Delaware corporation, having a principal place of business at 395 Oyster Point Boulevard, Suite 400, South San Francisco, CA 94080 ("Sunesis"), and Millennium Pharmaceuticals, Inc., a Delaware corporation, having a principal place of business at 40 Landsdowne Street, Cambridge, Massachusetts 02139 ("Millennium"). Sunesis and Millennium are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

BACKGROUND

A. Sunesis has developed proprietary technology and know-how for the discovery and optimization of small molecules that bind to enzyme targets and protein-protein interfaces, with special expertise towards kinases.

B. Pursuant to a Collaboration Agreement (the "Original Agreement") effective as of August 27, 2004 (the "Original Agreement Effective Date") by and between Sunesis and Biogen Idec MA Inc. ("Biogen Idec"), as amended, Sunesis and Biogen Idec collaborated on the discovery and development of small molecules that modulated Collaboration Targets (as defined in the Original Agreement), and discovered and commenced development of several compounds, including compounds designated as BIIB024 and [*], it being understood that BIIB024 has been designated as a "Development Candidate" under the terms of the Original Agreement.

C. Pursuant to a Termination and Transition Agreement (the "Three Party Agreement") dated as of March 31, 2011 (the "Effective Date"), Sunesis, Biogen Idec and Millennium agreed that (i) Millennium shall succeed to the rights of Biogen Idec under the Original Agreement with respect to the Licensed Compounds and certain other compounds and, in order to effectuate the foregoing, (ii) Sunesis and Millennium shall enter into that certain License Agreement, dated the Effective Date (the "License Agreement"), Sunesis and Biogen Idec shall enter into an amendment and restatement of the Original Agreement (the "New Sunesis-Biogen Agreement"), and Millennium and Biogen Idec shall enter into an asset transfer agreement (the "Millennium-Biogen Agreement").

D. Pursuant to the License Agreement, Millennium has been developing BIIB024 and designated small molecules that bind to two different targets, the Raf Target and the PDK Target, and Sunesis granted Millennium a license to its interest in the jointly owned intellectual property to develop and commercialize certain of such compounds.

E. The Parties now desire for Millennium to grant Sunesis rights to develop and commercialize compounds binding the PDK Target (but not compounds binding the Raf Target), and certain other rights with respect to such compounds. Accordingly, the Parties are amending and restating the License Agreement as this Agreement in accordance with Section 15.11 of the License Agreement.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

NOW, THEREFORE, for and in consideration of the covenants, conditions and undertakings hereinafter set forth, it is agreed by and between the Parties as follows:

ARTICLE 1
DEFINITIONS

As used herein, the following terms will have the meanings set forth below:

1.1."Affiliate" of a Person shall mean any corporation or other business entity that during the Term of this Agreement controls, is controlled by or is under common control with such Person but only for so long as such entity controls, is controlled by, or is under common control with such Person. With respect to a particular entity, "control" shall mean the ownership directly or indirectly of fifty percent (50%) or more of the stock entitled to vote for the election of directors, and for nonstock organizations, of the equity interests entitled to control the management of such entity. [*].

1.2. "Biogen Idec Collaboration Technology" shall mean all Biogen Idec Collaboration Patents and Biogen Idec Collaboration Know-How.

1.2.1 "Biogen Idec Collaboration Patents" shall mean (a) those Patent Rights set forth on Exhibit 1.4(a), the subject of which is an invention: (i) conceived in the course of performing the Research Program during the Research Term and reduced to practice prior to the Effective Date solely by or under authority of personnel of Biogen Idec or any of its controlled Affiliates; or (ii) conceived and reduced to practice solely by or under authority of personnel of Biogen Idec or any of its controlled Affiliates after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products; and (b) all Patent Rights that arise during the Term that claim or cover any Biogen Idec Collaboration Know-How. Notwithstanding the foregoing, Biogen Idec Collaboration Patents shall in all cases exclude Sunesis Core Technology, Joint Sunesis-Biogen Collaboration Patents and Sunesis Collaboration Patents.

1.2.2 "Biogen Idec Collaboration Know-How" shall mean any Know-How: (i) made or developed solely by or under authority of personnel of Biogen Idec or any of its controlled Affiliates in the course of performing the Research Program during the Research Term; or (ii) made or developed solely by or under authority of personnel of Biogen Idec or any of its controlled Affiliates after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products. Notwithstanding the foregoing, Biogen Idec Collaboration Know-How shall in all cases exclude Sunesis Core Technology, Joint Sunesis-Biogen Collaboration Know-How and Excluded Compounds (as defined in the Original Agreement).

1.3. "Co-Funding Option" shall mean the option of Sunesis to fund a portion of the post-Phase I Development Costs of a Licensed Product in the Co-Funded Territory as provided in Section 2.2. The "Co-Funded Territory" shall have the meaning set forth in Section 2.2.1.

1.4. "Collaboration Technology" shall mean all Collaboration Patents and Collaboration Know-How.

1.4.1 "Collaboration Patents" shall mean all Biogen Idec Collaboration Patents, Sunesis Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents. Exhibit 1.4(a) sets forth the Collaboration Patents existing as of the Amendment Effective Date.

1.4.2 "Collaboration Know-How" shall mean all Biogen Idec Collaboration Know-How, Sunesis Collaboration Know-How and Joint Sunesis-Biogen Collaboration Know-How.

1.5. "Combination Product" shall mean any of (i) a Licensed Product that incorporates two or more active drug substances including a Licensed Compound, or (ii) a PDK Product that incorporates two or more active drug substances including a PDK Compound; or (iii) a Reverted Licensed Product that incorporates two or more active drug substances including a Reverted Compound; in each case where at least one of the active drug substances is not a Licensed Compound, PDK Compound or Reverted Compound, respectively.

1.6. "Commercially Reasonable and Diligent Efforts" shall mean the level of effort and resources normally used by a Party for a product or compound owned or controlled by it, which is of similar market potential and at a similar stage in its development or product life, taking into account, without limitation, with respect to a product issues of safety and efficacy, product profile, the proprietary position of the product, the then current competitive environment for the product and the likely timing of the product's entry into the market, the regulatory environment of the product, and other relevant scientific, technical and commercial factors. 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 its Commercially Reasonable and Diligent Efforts in performing such responsibilities. Notwithstanding, but not in limitation of the foregoing, Millennium shall be deemed to be using Commercially Reasonable and Diligent Efforts for a Co-Funded Product specifically directed at a particular Designated Target if it is using Commercially Reasonable and Diligent Efforts with respect to a Licensed Compound specifically directed at such Designated Target.

1.7 "Confidential Information" shall mean, with respect to a Party, all information (and all tangible and intangible embodiments thereof), which is owned or controlled by such Party, and is disclosed by such Party to the other Party pursuant to this Agreement. Notwithstanding the foregoing, Confidential Information of a Party shall not include information which, and only to the extent, the receiving Party can establish by written documentation (a) has been generally known prior to disclosure of such information by the disclosing Party to the receiving Party; (b) has become generally known, without the fault of the receiving Party, subsequent to disclosure of such information by the disclosing Party to the receiving Party;

(c) has been received by the receiving Party at any time from a source, other than the disclosing Party, rightfully having possession of and the right to disclose such information free of confidentiality obligations; (d) has been otherwise known by the receiving Party free of confidentiality obligations prior to disclosure of such information by the disclosing Party to the receiving Party; or (e) is independently developed without reference to or use of the Confidential Information of the disclosing Party. For clarity, except as otherwise expressly provided in this Agreement, Sunesis Collaboration Technology and Joint Sunesis-Biogen Collaboration Technology shall be deemed Confidential Information of both Millennium and Sunesis. For clarity, Biogen Idec Collaboration Technology and Development Technology shall (i) if related to any of the Raf Target, Licensed Compounds or Licensed Products, be deemed Confidential Information solely of Millennium (unless and until such time as such Licensed Compound becomes a Reverted Compound or such Licensed Product becomes a Reverted Licensed Product in accordance with the Agreement, in which case it shall be deemed Confidential Information solely of Sunesis); and (ii) if related to any of the PDK Target, PDK Compounds or PDK Products, be deemed Confidential Information solely of Sunesis, and PDK Technology shall be deemed Confidential Information solely of Sunesis, in each case unless and until such time as such PDK Compound becomes a Licensed Compound or such PDK Product becomes a Licensed Product in accordance with the Agreement, in which case it shall be deemed Confidential Information solely of Millennium.

1.8 "Control" or "Controlled" shall mean, with respect to any Patent Rights or Know-how and with respect to any Person, possession (whether by ownership or license, other than a license granted pursuant to this Agreement) by such Person or its Affiliate of the ability to grant the licenses or sublicenses as provided for herein without violating the terms of any agreement or other arrangement with any Third Party.

1.9 "Covered" shall mean, with respect to a compound and a Valid Claim, that the manufacture, use, sale, offer for sale or importation of such compound, but for the licenses or ownership rights granted herein, would infringe such Valid Claim.

1.10 "Designated Targets" shall mean (i) the Raf Target and (ii) the PDK Target.

1.11 "Development" shall mean all research, development and regulatory activities regarding the Licensed Products. "Development" shall include all activities related to research, optimization and design of the appropriate molecule and identification of back-ups, preclinical testing, test method development and stability testing, toxicology, formulation, process development, manufacturing scale-up, qualification and validation, quality assurance/quality control, clinical studies, manufacturing clinical supplies, regulatory affairs, statistical analysis and report writing, technology transfer, market research and development, and all other pre-approval and related post-approval activities. When used as a verb, "Develop" shall mean to engage in Development.

1.12 "Development Candidate" shall mean any Licensed Compound that enters into GLP clinical toxicology testing or GMP manufacturing.

1.13 “Development Costs” shall mean the costs and expenses associated with Development activities actually incurred by Millennium or its Affiliates for a particular Licensed Product during the measurement period and in the territories described in Section 2.2.4(c). The costs and expenses associated with Development activities shall include [*]. In determining “Development Costs” chargeable under this Agreement, Millennium will use its project accounting systems, and will review its project accounting systems and methodologies with Sunesis. The Parties hereby agree that efforts of the employees of Millennium or its Affiliates in performing its activities hereunder shall be charged as Development Costs at the FTE Rate. Notwithstanding anything in this Section 1.13 to the contrary, only those Development Costs that are contemplated by the Co-Development Plan and Budget or were otherwise approved by the Joint Steering Committee shall be chargeable by Millennium as Development Costs. It is further understood that the activities of the following groups or functions shall not be chargeable as Development Costs: [*]. All payments made by Millennium to a Third Party in connection with the performance of its activities under the Co-Development Plan and Budget shall be charged as Development Costs at Millennium’s actual out-of-pocket cost. Expenses incurred by Millennium for equipment, materials and supplies utilized in performing its activities under the Co-Development Plan and Budget shall not be separately charged as Development Costs, except for those expenses incurred by Millennium, with the prior written consent of the Joint Steering Committee as set forth in the Co-Development Plan and Budget, in the purchase or making of [*], and the like) that are to be used exclusively in connection with the performance of Millennium’s activities under the Co-Development Plan and Budget (e.g., [*], etc.), which expenses shall be charged as Development Costs at Millennium’s actual out-of-pocket expense incurred in purchasing or making such [*].

1.14 “Development Technology” shall mean any Know-How that is made or developed solely by or under authority of either Party or its Affiliates, or jointly by or under authority of both Parties or their respective Affiliates, in the course of performing any activity under (a) the License Agreement that is [*] to a Designated Target or [*] to the Development, manufacturing or commercialization of a Licensed Compound, Licensed Product, PDK Compound or PDK Product, or (b) this Agreement that is [*] to the Raf Target or [*] to the Development, manufacturing or commercialization of a Licensed Compound or Licensed Product, and in each case (a) and (b) all Patent Rights that claim or cover any such Know-How. Development Technology shall in all cases exclude Biogen Idec Collaboration Technology, Sunesis Collaboration Technology, Sunesis Core Technology, Joint Sunesis-Biogen Collaboration Technology and PDK Technology.

1.15 “Diligence Summary” shall mean, with respect to a particular Product, a summary of Development and commercialization activities with respect to such Product, that (i) were performed by the reporting Party or its Third Party collaborators in the previous [*] period (or shorter period from the prior Diligence Summary, if applicable), and (ii) as of the date of the Diligence Summary, are planned in good faith for the following [*] period. For clarity, it is understood and acknowledged that in providing a Diligence Summary, a Party shall not be required to disclose scientific results, specific research activities or the identity of any Third Party collaborator or potential collaborator, but shall at a minimum provide a summary of the total number of FTEs dedicated or planned to be dedicated to the Development and commercialization of such Product, and a summary of the functional allocation of such FTEs.

1.16 "Field" shall mean the treatment, prevention or diagnosis of disease in humans and animals.

1.17 "FTE" shall mean, with respect to a Party, the equivalent of the work time of a full-time clinician, regulatory or other qualified person over a twelve-month period (including normal vacations, sick days and holidays), equal to at least [*] ([*]) weeks of work. In the case of less than a full-time person, the portion of an FTE year devoted by such person to Development activities shall be determined by dividing the number of days during any twelve-month period devoted by such person to Development activities by the total number of working days of such person during such twelve-month period. "FTE Rate" for Millennium shall mean $[*] per annum per FTE from the Effective Date through December 31, 2011. Thereafter, the FTE Rate will be adjusted by the Inflation Index. As used herein, "Inflation Index" shall mean the percentage increase in the Consumer Price Index for all Urban Consumers, as published by the U.S. Department of Labor, Bureau of Statistics, since the Effective Date. For clarity, the FTE rate for sales representatives involved in co-promotion shall be determined in accordance with Section 3.2.3.

1.18 "Governmental Authority" shall mean any multi-national, federal, state, local, municipal or other government authority of any nature (including any governmental division, prefecture, subdivision, department, agency, bureau, branch, office, commission, council, court or other tribunal).

1.19 "Gross Sales" shall mean the gross amount invoiced by either Party or its Affiliates or permitted Sublicensees for sales of a Product. However, Gross Sales shall not include amounts received by such Party (or any of its Affiliates) from transactions with an Affiliate or Sublicensee, where the Product in question will be resold by such Affiliate or Sublicensee to an independent Third Party distributor, agent or end user and such amounts received by the Affiliate or Sublicensee from such resale is included in Gross Sales.

1.20 "Joint Sunesis-Biogen Collaboration Technology" shall mean all Joint Sunesis-Biogen Collaboration Patents and Joint Sunesis-Biogen Collaboration Know-How.

1.20.1 "Joint Sunesis-Biogen Collaboration Patents" shall mean (a) those Patent Rights set forth on Exhibit 1.4(a), the subject of which is an invention: (i) conceived in the course of performing the Research Program during the Research Term and reduced to practice prior to the Effective Date jointly by, or under authority of, both Sunesis and Biogen Idec; (ii) conceived and reduced to practice jointly by, or under authority of, Sunesis and Biogen Idec after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products; or (iii) conceived in the course of performing the Research Program during the Research Term and reduced to practice prior to the Effective Date using Joint Sunesis-Biogen Collaboration Know-How, Sunesis Collaboration Know-How or Sunesis Core Technology by or under authority of personnel of Biogen Idec or any of its controlled Affiliates; and (b) all Patent Rights that arise during the Term that claim or cover any Joint Sunesis-Biogen Collaboration Know-How. For clarity, the inventions described in subsection (a)(iii) above are limited to those inventions [*] or comprising compositions of matter that modulate Designated Targets or methods of use thereof in modulating Designated Targets. Notwithstanding the foregoing, Joint Sunesis-Biogen Collaboration Patents shall in all cases exclude Sunesis Core Technology, Biogen Idec Collaboration Patents and Sunesis Collaboration Patents.

1.20.2 "Joint Sunesis-Biogen Collaboration Know-How" shall mean any Know-How: (i) made or developed jointly by, or under authority of, both Sunesis and Biogen Idec in the course of performing the Research Program during the Research Term; (ii) made or developed jointly by, or under authority of, both Sunesis and Biogen Idec after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products.

1.21 "Know-How" shall mean any data, inventions, invention disclosures, methods, proprietary information, processes, techniques, technology, or material (including biological or other materials).

1.22 "Licensed Compounds" shall mean (i) BIIB024, (ii) the other compounds set forth on Exhibit G of the Millennium-Biogen Agreement, (iii) all other compounds that were Synthesized in the course of performing the Research Program during the Research Term in connection with activities relating to the Raf Target, (iv) all other compounds claimed or covered by a Collaboration Patent that are [*] to the Raf Target (including Collaboration Patents listed under "Raf Portfolio" in Exhibit 1.4(a) attached hereto, which has been updated as of the Amendment Effective Date), (v) all other compounds claimed or covered by an invention disclosure within the Collaboration Know-How that are [*] to the Raf Target, and (vi) all salts, prodrugs, esters, metabolites, solvates, stereoisomers and polymorphs of any of the foregoing. As from the Amendment Effective Date, Licensed Compounds excludes all PDK Compounds.

1.23 "Licensed Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for all uses in humans or animals, which incorporates one or more Licensed Compounds as an active drug substance, but excluding Reverted Licensed Products. It is understood that Licensed Products containing different active ingredient(s) (i.e., a different active ingredient or an additional active ingredient) or a different formulation shall be deemed different "Licensed Products".

1.24 "Major Market" means any of [*].

1.25 "Millennium Licensed Technology" shall mean Millennium Licensed Patents and Millennium Licensed Know-How.

1.25.1 "Millennium Licensed Patents" shall mean Millennium's interest in the Patent Rights to the PDK Compounds or PDK Products that were acquired from Biogen pursuant to the Millennium-Biogen Agreement, all of which are listed under the "PDK Portfolio" in Exhibit 1.4(a) to this Agreement.

1.25.2 "Millennium Licensed Know-How" shall mean Millennium's interest in Biogen Idec Collaboration Know-How that was acquired from Biogen pursuant to the Millennium-Biogen Agreement [*] to the PDK Target or [*] to the PDK Compounds or PDK Products.

1.26 “NDA” shall mean a New Drug Application (or its equivalent), as defined in the U.S. Food, Drug and Cosmetic Act and the regulations promulgated thereunder, or any corresponding or similar application, registration or certification in any jurisdiction for marketing authorization of a Product.

1.27 “Net Sales” shall mean, with respect to a Product, Gross Sales less applicable Sales Returns and Allowances.

If a sale, transfer or other disposition with respect to a Product is made for consideration other than cash or is not at arm’s length, then the Net Sales from such sale, transfer or other disposition shall be the arm’s length fair market value thereof. For purposes of this Agreement, “sale” shall mean any transfer or other distribution or disposition, but shall not include transfers or other distributions or dispositions of Product, at no charge, for pre-clinical, clinical or regulatory purposes or in connection with patient assistance programs or other charitable purposes or to physicians or hospitals for promotional purposes.

In the event that a Product is sold in the form of a Combination Product, Net Sales for the Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the fraction A/(A+B) where A is the average sale price of the Product as the sole active drug substance when sold separately in finished form, and B is the average sales price of products containing only the other active ingredients when sold separately in finished form, in each case during the applicable royalty payment period in the country in which the sale of the Combination Product was made, or if sales of both types of products did not occur in such period, then in the most recent royalty payment period in which sales of both occurred. Where the Product is sold separately in finished form but the other ingredients are not, Net Sales for the Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the ratio of the average per-unit sale price of the Product when sold separately in finished form to the average per-unit Net Sales of the Combination Product, in each case during the applicable royalty payment period in the country in which the sale of the Combination Product was made. Where the other active ingredients are sold separately in finished form but the Product is not, Net Sales for the Product shall be determined by multiplying actual Net Sales of the Combination Product (determined by reference to the definition of Net Sales set forth above) during the royalty payment period by the difference obtained by subtracting from one (1) the ratio of the average per-unit sale price of products containing only the other active ingredient when sold separately in finished form to the average per-unit Net Sales of the Combination Product, in each case during the applicable royalty reporting period in the country in which the sale of the Combination Product was made. In the event that such average sales price cannot be determined for either of the Product or for products containing only the other active ingredient included in the Combination Product, Net Sales for purposes of determining payments under this Agreement shall be determined by good faith negotiations between the Parties.

1.28 "Patent Rights" shall mean all patents and patent applications in any country in the world, including any continuations, continuations-in-part, divisionals, provisionals or any substitute applications, any patent issued with respect to any such patent applications, any reissue, reexamination, renewal or extension (including any supplemental protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all non-United States counterparts of any of the foregoing.

1.29 "PDK Compounds" shall mean (i) [*], (ii) [*], (iii) [*], (iv) [*], (v) the other compounds set forth on Exhibit F of the Millennium-Biogen Agreement, (vi) all other compounds that were Synthesized in the course of performing the Research Program during the Research Term in connection with activities [*] to the PDK Target, (vii) all other compounds claimed or covered by a Collaboration Patent that are [*] the PDK Target (including Collaboration Patents listed under "PDK Portfolio" in Exhibit 1.4(a) hereinunder), (viii) all other compounds claimed or covered by an invention disclosure within the Collaboration Know-How that are [*] the PDK Target, and (ix) all salts, prodrugs, esters, metabolites, solvates, stereoisomers and polymorphs of any of the foregoing.

1.30 "PDK Product" shall mean a pharmaceutical preparation for sale by prescription, over-the-counter, or any other method for all uses in humans or animals, which incorporates one or more PDK Compounds as an active drug substance. It is understood that PDK Products containing different active ingredient(s) (i.e., a different active ingredient or an additional active ingredient) or a different formulation shall be deemed different "PDK Products". For clarity, any product that does not contain a PDK Compound shall not be considered a PDK Product.

1.31 "PDK Target" shall mean human 3-phosphoinositide-dependent protein kinase-1.

1.32 "Person" shall mean any natural person, corporation, general partnership, limited partnership, joint venture, proprietorship or other business organization or a Governmental Authority.

1.33 "Phase I" shall mean human clinical trials, the principal purpose of which is the preliminary evaluation of safety in healthy individuals as more fully defined in 21 C.F.R. §312.21(a) or similar clinical study in a country other than the United States. An initial study in patients where the primary purpose is the preliminary evaluation of safety will be considered a Phase I study.

1.34 "Phase II" shall mean human clinical trials conducted on a limited number of patients for the primary purpose of evaluation of both clinical efficacy and safety, or to obtain a preliminary evaluation of the dosage regimen, as more fully defined in 21 C.F.R. §312.21(b).

1.35 "Phase III" shall mean human clinical trials, the principal purpose of which is to establish substantial evidence of both safety and efficacy in patients with the disease or condition being studied, as more fully defined in 21 C.F.R. §312.21(c) or similar clinical study in a country other than the United States. Phase III shall also include any other human clinical trial intended to serve as a pivotal trial to support the submission of an application for regulatory approval.

1.36 "Product" shall mean a Licensed Product, Reverted Licensed Product or PDK Product, as applicable.

1.37 "Raf Target" shall mean the human Raf protein together with the Raf protein family members [*].

1.38 "Regulatory Approval" shall mean approval of the health regulatory agency in a country (FDA in the U.S. and comparable authority outside the U.S.) necessary for the marketing and sale of a product in the applicable country. As used herein, "Regulatory Approval" shall not include pricing or reimbursement approval.

1.39 "Research Program" shall mean the activities undertaken by Sunesis and Biogen Idec pursuant to the Original Agreement during the Research Term.

1.40 "Research Term" shall mean the period of time beginning on the Original Agreement Effective Date and ending on June 30, 2008.

1.41 "Reverted Compound" shall mean, with respect to a Reverted Licensed Product, any Licensed Compound included in such Reverted Licensed Product.

1.42 "Sales Returns and Allowances" shall mean, with respect to a specific Product, the sum of (a) and (b), where: (a) is a provision, determined by a Party under U.S. GAAP for sales of such Product for (i) trade, cash and quantity discounts on such Product (other than price discounts granted at the time of invoicing and which are already included in the determination of Gross Sales), (ii) credits or allowances given or made for rejection or return of, and for uncollectable amounts on, previously sold product or for rebates or retroactive price reductions (including Medicare, Medicaid and similar types of rebates and chargebacks), (iii) taxes, duties or other governmental charges levied on or measured by the billing amount for such Product, as adjusted for rebates and refunds (excluding income and franchise taxes), (iv) charges for freight and insurance directly related to the distribution of such Product, to the extent included in Gross Sales, and (v) credits for allowances given or made for wastage replacement, indigent patient and any other sales programs agreed to by the Parties for such Product; and (b) is a periodic adjustment of the provision determined in (a) to reflect amounts actually incurred by a Party for items (i), (ii), (iii), (iv) and (v) in clause (a).

1.43 "Sublicensee" shall mean a Third Party expressly licensed by a Party or its Affiliate to make, use, import, offer for sale or sell a Product. The term "Sublicensee" shall not include distributors (i.e., a Third Party who purchases Product from a Party for resale).

1.44 "Sunesis Collaboration Technology" shall mean all Sunesis Collaboration Patents and Sunesis Collaboration Know-How.

1.44.1 "Sunesis Collaboration Patents" shall mean (a) those Patent Rights set forth on Exhibit 1.4(a), the subject of which is an invention: (i) conceived in the course of performing the Research Program during the Research Term and reduced to practice prior to the Effective Date solely by or under authority of personnel of Sunesis or any of its controlled Affiliates or (ii) conceived and reduced to practice solely by or under authority of personnel of

Sunesis or any of its controlled Affiliates after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products; and (b) all Patent Rights that arise during the Term that claim or cover any Sunesis Collaboration Know-How. Notwithstanding the foregoing, Sunesis Collaboration Patents shall in all cases exclude Sunesis Core Technology and Joint Sunesis-Biogen Collaboration Patents.

1.44.2 "Sunesis Collaboration Know-How" shall mean any Know-How: (i) made or developed solely by or under authority of personnel of Sunesis or any of its controlled Affiliates in the course of performing the Research Program during the Research Term; or (ii) made or developed solely by or under authority of personnel of Sunesis or any of its controlled Affiliates after the Original Agreement Effective Date but prior to the Effective Date, in the case of either (i) or (ii) in the course of activities [*] to the Designated Targets or to the discovery, research, or development of Licensed Compounds or Licensed Products. Notwithstanding the foregoing, Sunesis Collaboration Know-How shall in all cases exclude Sunesis Core Technology, Joint Sunesis-Biogen Collaboration Know-How and Excluded Compounds (as defined in the Original Agreement).

1.45 "Sunesis Core Technology" shall mean all Patent Rights (all as listed on Exhibit 1.41) and all information, materials and other subject matter, and improvements thereof, relating to (i) mutants or the use thereof in screening, (ii) the use of novel protein engineering techniques and their application in drug discovery, (iii) target-directed fragment discovery and maturation to produce drug leads, including monophores, extenders and fragments and monophore, extender and fragment libraries for such purposes, or (iv) covalent tethering and techniques related thereto (e.g., NMR, X-ray, mass spec. AUC, Biacore) and its use to discover fragments and test binding hypotheses of fragments and leads: (a) Controlled by Sunesis or its controlled Affiliates prior to the Original Agreement Effective Date or during the Research Term; or (b) made by Biogen Idec in the course of activities directed to the discovery, research, or development of Licensed Compounds and PDK Compounds; provided, in the case of (b) that such item was made using or derived from Sunesis Core Technology.

1.46 "Sunesis Licensed Technology" shall mean Sunesis Licensed Patents and Sunesis Licensed Know-How.

1.46.1 "Sunesis Licensed Patents" shall mean (i) Sunesis's interest in Collaboration Patents, (ii) the Patent Rights Controlled by Sunesis as of the Effective Date that claim or cover the Designated Targets, Licensed Compounds or Licensed Products, and (iii) all Patent Rights that arise during the Term that claim or cover any Know-How Controlled by Sunesis as of the Effective Date that relates to a Designated Target, Licensed Compound or Licensed Product.

1.46.2 "Sunesis Licensed Know-How" shall mean (i) Sunesis Collaboration Know-How, (ii) Sunesis's interest in Joint Sunesis-Biogen Collaboration Know-How and Biogen Idec Collaboration Know-How, (iii) with respect to any Licensed Product that is not a Co-Funded Product, any Know-How Controlled by Sunesis as of the Effective Date that relates to a Designated Target, Licensed Compound or Licensed Product, and (iv) with respect to any Licensed Product that is a Co-Funded Product, any Know-How Controlled by Sunesis that relates to a Designated Target, Licensed Compound or Licensed Product.

1.47 "Synthesize", "Synthesis" or "Synthesized" shall mean, with respect to a chemical composition, the act of (i) first physical synthesis of such chemical composition, or (ii) if such composition had previously been first actually synthesized, first physically establishing, in a relevant assay, that such composition is Target Selective against a specific Designated Target. For avoidance of doubt Synthesize shall not include chemical compositions synthesized *in vivo*.

1.48 "Target Selective" shall mean, when used to describe a chemical compound with respect to a specified Designated Target, that such compound exhibits [*] cell-based assay, and [*] (i) [*] enzyme assay [*] or (ii) [*]. For the purposes of the foregoing, the relevant cell-based and enzyme assays shall be as specified in Exhibit 01.44, and the [*] in (ii) shall be measured in the same enzyme assay as (i).

1.49 "Third Party" shall mean any person or entity other than Sunesis and Millennium, and their respective Affiliates.

1.50 "Valid Claim" shall mean [*].

1.51 Additional Terms. In addition to the foregoing, the following terms shall have the meaning defined in the corresponding Section below:

Term	Section Defined	Term	Section Defined
Agreement	Preamble	Key Subsidiary	2.2.4(a)
Annual Net Sales	6.3.1	Liabilities	12.1
Biogen Idec	Background	Licensed Compound Joint Technology	9.1.1(c)
Change in Control	2.2.4(a)	Licensed Product Team	2.3
Co-Development Plan and Budget	2.2.2	Millennium	Preamble
Co-Funded Product	2.2.1	Millennium-Biogen Agreement	Background
Co-Funded Territory	2.2.1	Millennium Competitor	2.2.4(b)
Co-Funding Percentage	2.2.3	New Sunesis-Biogen Agreement	Background
[*]	15.3	Notice Period	2.2.1
Controlling Party	9.3.4	Original Agreement	Background

Term	Section Defined	Term	Section Defined
Cooperating Party	9.3.4	Original Agreement Effective Date	Background
Co-Promoted Licensed Product	3.2	Other Joint Technology	9.1.1(c)
Co-Promotion Option	3.2	Other Millennium Technology	5.1.3
Election Notice	2.2.1	Party, Parties	Preamble
Election Percentage	3.2.1	Phase II Drug Collaboration	5.3
Indemnitee	12.3	Phase II Notice	2.2.1
Indemnitor	12.3	post Phase I Development Costs	2.2.4(c)
Indication	6.2.2(b)	Projected Start Date	2.2.1
Initial Development Plan	2.2.1	Raf Patents	9.1.1(a)
Initial Territory	2.2	Reverted Licensed Product	8.2
Infringement Action	9.3.4	Sales and Marketing Plan	4.4.2
JCC	4.4.1	Sunesis	Preamble
JDC	4.3.1	Subject Infringement	9.3.1
Joint Steering Committee	4.1	Term	13.1
Joint Sub-Committee	4.2	Three Party Agreement	Background

1.52 Construction. In construing this Agreement, unless expressly specified otherwise:

1.52.1 references to Sections, Articles and Exhibits are to sections and articles of, and exhibits to, this Agreement;

1.52.2 except where the context otherwise requires, use of any gender includes any other gender, and use of the singular includes the plural and vice versa;

1.52.3 any list or examples following the word “including” shall be interpreted without limitation to the generality of the preceding words;

1.52.4 except where the context otherwise requires, the word “or” is used in the inclusive sense; and

1.52.5 all references to “dollars” or “$” herein shall mean U.S. Dollars.

ARTICLE 2
PRODUCT DEVELOPMENT

2.1. Development by Millennium. Commencing on the Effective Date, Millennium shall be responsible for undertaking a development program aimed at ultimately seeking Regulatory Approval for Licensed Products.

2.2. Co-Funding Option. Sunesis shall have the right, on a Licensed Product-by-Licensed Product basis, to elect to fund a portion of post Phase I Development Costs of a Licensed Product in all countries worldwide other than Japan (the "Initial Territory"); provided, however, that Sunesis shall not have the Co-Funding Option with respect to any Licensed Product directed against a Designated Target for which Sunesis has entered into a Phase II Drug Collaboration. In the event that Sunesis elects to exercise its Co-Funding Option with respect to the Initial Territory for a particular Licensed Product pursuant to the preceding sentence, then Sunesis shall have the right to elect to fund a portion of post Phase I Development Costs of such Licensed Product in Japan, all in accordance with this Section 2.2.

2.2.1 Election. For so long as Sunesis continues to have a Co-Funding Option for a Licensed Product, Millennium shall notify Sunesis [*] for each Licensed Product in each of the applicable territories described above in Section 2.2 where the primary endpoint of such trial involves a preliminary determination of efficacy. For clarity, for purposes of this Section 2.2.1, [*] for each Licensed Product shall mean [*], and elsewhere in this Agreement, [*] of a trial (regardless of phase) or clinical study shall mean [*]. Such notice shall include the date [*]. Sunesis may elect, by so notifying Millennium in writing [*] (the "Notice Period"), to participate in funding the further development of such Licensed Product in the applicable territory, as described in this Section 2.2 (such notice, the "Election Notice"). [*] and until the end of the Notice Period, Millennium shall cooperate fully with Sunesis, and shall promptly provide Sunesis with access to such material information, to the extent such information is not included in the Initial Development Plan or otherwise has not been communicated previously to Sunesis, as Sunesis may reasonably request to enable Sunesis to make an informed decision whether to exercise its Co-Funding Option under this Section 2.2 with respect to such Licensed Product. Such cooperation shall include consulting with Sunesis in good faith regarding the Initial Development Plan, and the financial, scientific and regulatory assumptions reflected therein. In the event Sunesis exercises its Co-Funding Option with respect to a particular Licensed Product (such Licensed Product, a "Co-Funded Product"), the provisions of Sections 2.2.2 through 2.2.4 below shall apply with respect to such Co-Funded Product in the Co-Funded Territory. The "Co-Funded Territory" shall consist of the Initial Territory for each Co-Funded Product, and in the event Sunesis elects to exercise its Co-Funding Option for Japan with respect to a particular Co-Funded Product, the Co-Funded Territory shall mean all territories worldwide for such Co-Funded Product. In the event that Sunesis elects not to exercise the Co-Funding Option with respect to a Licensed Product or fails to provide an Election Notice within the applicable Notice Period, Sunesis shall no longer have the right to exercise the Co-Funding Option, and Millennium shall have no further obligations under this Section 2.2.1, with respect to such Licensed Product.

2.2.2 JDC. For each Co-Funded Product, the Parties shall establish and maintain a JDC in accordance with Section 4.3 below, which shall be responsible for establishing the plan and budget for the development of each Co-Funded Product (each, a "Co-Development Plan and Budget") and overseeing the implementation of such plan. Such Co-Development Plan and Budget shall be comprehensive (as of the time of preparation and delivery hereunder) and shall fully describe at least the proposed activities and data related to [*], and other activities and timelines directed to obtaining the initial and subsequent Regulatory Approvals in each applicable country. Unless otherwise specified in a Co-Development Plan and Budget amounts reflected for a full year shall be deemed budgeted in equal amounts for each calendar quarter of such year.

2.2.3 Co-Funding Obligation. In the event Sunesis exercises its Co-Funding Option with respect to a Licensed Product, Sunesis shall be obligated to reimburse Millennium for a percentage (the "Co-Funding Percentage") of post Phase I Development Costs for such Licensed Product, subject to the provisions of this Section 2.2. It is understood and agreed that the Co-Funding Percentage shall initially be [*] percent ([*]%) for each Co-Funded Product. In addition the following shall apply:

(a) The Co-Development Plan and Budget will be updated on a quarterly basis. Millennium shall provide to Sunesis its then current estimates for each upcoming budget year for each Co-Funded Product by November 15 of each year. Promptly following April 1 of each calendar year during the development activities for a particular Co-Funded Product or such other date as is mutually agreed by the Parties, the JDC shall update and amend the Co-Development Plan and Budget for such Co-Funded Product for the period ending March 31 of the subsequent calendar year. Millennium shall provide Sunesis with reasonable opportunity to provide input into each Co-Development Plan and Budget, and, subject to Article 4, Millennium shall reasonably consider Sunesis's comments in establishing and updating each Co-Development Plan and Budget.

(b) Within thirty (30) days after the end of each calendar quarter, Millennium shall provide to Sunesis a statement reflecting the total post Phase I Development Costs incurred by Millennium in accordance with the then-current Co-Development Plan and Budget during such calendar quarter with respect to each Co-Funded Product. Within thirty (30) days after Sunesis's receipt of such statement, Sunesis shall reimburse Millennium for the applicable Co-Funding Percentage of the post Phase I Development Costs incurred by Millennium during such calendar quarter for such Co-Funded Product.

(c) Upon [*] days written notice to Millennium, Sunesis may terminate its Co-Funding Option for a particular Co-Funded Product. In such event, Sunesis's funding obligation under this Section 2.2.3 above shall apply only with respect to post Phase I Development Costs for activities conducted with respect to such Co-Funded Product prior to the effective date of such termination. Should Sunesis terminate its Co-Funding Option under this Section 2.2.3(c) with respect to a particular Co-Funded Product, (i) any royalties payable to Sunesis on such Co-Funded Product shall be paid in accordance with Section 6.3.1, subject to Section 6.3.2(b), and (ii) Sunesis shall relinquish its right to participate in the JDC pursuant to Section 4.3 and any right to its Co-Promotion Option under Section 3.2 for such Co-Funded Product.

(d) Upon written notice to Millennium at least ninety (90) days prior to the end of a budget year, Sunesis may elect to [*], by so notifying Millennium in writing, referencing this Section 2.2.3(d) and specifying [*]. In such event, Sunesis shall receive a [*] in accordance with the schedule set forth in Section 6.3.2(c) below [*]. Upon such election, Sunesis's previous Co-Funding Percentage under this Section 2.2.3 shall apply only with respect to post Phase I Development Costs for activities conducted with respect to such Co-Funded Product [*] with respect to such Co-Funded Product. Sunesis may [*], provided that (i) Sunesis shall not be permitted [*] its Co-Funding Percentage for such Co-Funded Product, and (ii) Sunesis may [*]. As used herein, "budget year" shall mean April 1 through March 31, provided that Millennium shall have the right to change the budget year to coincide with Millennium's annual budget cycle, provided that Millennium provides Sunesis with at least one hundred twenty (120) days notice of such change.

(e) Notwithstanding the foregoing, in the event that Sunesis experiences a Change in Control, then Sunesis's Co-Promotion rights under Section 3.2, the right to participate in the JDC under Section 4.3, the right to participate in the JCC under Section 4.4, and any Licensed Product Teams under Section 2.3 shall terminate. In addition:

(i) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option prior to such Change of Control, Sunesis's rights and obligations under this Section 2.2.3 shall continue, provided that Millennium shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis (or its successor entity), but shall provide Sunesis (or its successor entity) with annual budgets of post Phase I Development Costs for such Co-Funded Product.

(ii) Sunesis's Co-Funding Option with respect to future Licensed Products shall continue as well (i.e., with respect to Licensed Products that are not Co-Funded Products as of the date of such Change of Control), provided that Millennium shall no longer be obligated to provide for each Licensed Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice. Millennium shall, however, provide Sunesis (or its successor entity) with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 2.2.1, and shall provide reasonable cooperation to Sunesis (or its successor entity) in evaluating such Licensed Product and the post Phase I Development Costs related thereto, including consulting with Sunesis (or its successor entity) in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

2.2.4 Certain Terms. As used in this Section 2.2, the following terms shall have the meanings set forth below:

(a) "Change in Control" shall mean, [*].

(b) "Millennium Competitor" shall mean [*].

(c) “post Phase I Development Costs” shall mean, with respect to a particular Co-Funded Product, the Development Costs incurred by Millennium or its Affiliates following Sunesis’s exercise of the Co-Funding Option for such Co-Funded Product in the Co-Funded Territory for such Co-Funded Product. For the avoidance of doubt, (i) post Phase I Development Costs shall not include any Development Costs incurred by Millennium or its Affiliates for any subsequent Phase I trials, and (ii) Development Costs relating to activities directed at obtaining Regulatory Approval in Japan for a Co-Funded Product shall not be considered post Phase I Development Costs to the extent such Development Costs are incurred (A) prior to completion of the Phase I trials for such Co-Funded Product in Japan, or (B) if no Phase I trials are necessary or performed for such Co-Funded Product in Japan, then prior to initiation of any clinical trial other than a Phase I trial.

2.3. Licensed Product Team. Upon identification of a Development Candidate for any Licensed Compound other than BIIB024, the Parties shall form a product team with respect to such Licensed Compound that is a Co-Funded Product (which team shall report to the JDC if Sunesis exercises its Co-Funding Option with respect to such Licensed Compound), comprised of Millennium and Sunesis personnel, that will share all relevant information and implement the further development and regulatory affairs with respect to that Co-Funded Product (each a “Licensed Product Team”) in accordance with the Co-Development Plan and Budget. It is understood that both Millennium and Sunesis shall have the opportunity for meaningful participation in the activities of a Licensed Product Team commensurate with their respective levels of funding participation; it being further understood that Millennium shall control the Development of the Licensed Product. Sunesis shall be notified at least two weeks in advance of the date of each Licensed Product Team meeting, which meetings shall be held quarterly by in-person meetings or electronic conference, and shall have the opportunity to have its representatives attend such meeting. Millennium shall provide such Sunesis representatives with all information distributed to Millennium members of the Licensed Product Team, and such other material information as Sunesis may reasonably request from time to time, in each case related to the Development and commercialization of Licensed Product. With respect to [*], within thirty (30) days after the Effective Date, the Parties shall establish a Licensed Product Team for [*] as a Licensed Product (i.e., even though the such Licensed Product is not yet a Co-Funded Product). The Parties shall maintain any such Licensed Product Team under this Section 2.3 until the Co-Funding Option lapses or is declined with respect to such Licensed Product. For clarity, it is understood that the establishment of a Licensed Product Team hereunder for a Licensed Product directed at the Raf Target shall not obligate Sunesis to subsequently exercise the Co-Funding Option with respect to such Licensed Product. The Licensed Product Team will be composed of three (3) representatives of Millennium (at Millennium’s discretion) and three (3) representatives of Sunesis, who shall be appointed (and may be replaced at any time) by the respective Party on written notice to the other Party in accordance with this Agreement. The Parties may invite additional employee observers based on the subject matter of the meeting, who shall be able to participate in such meetings. The Sunesis representatives shall not be entitled to vote on any Licensed Product Team matters. In any event, the Licensed Product Team shall terminate in the event that Sunesis does not exercise its Co-Funding Option.

2.4. Regulatory Matters. Millennium shall file and be the owner of all regulatory filings for Licensed Compounds or Licensed Products (including Co-Funded Products) developed pursuant to this Agreement, including all NDAs and Regulatory Approvals, unless otherwise agreed by the Parties.

2.5. Records; Inspections.

2.5.1 Research Records. Sunesis shall maintain records of the Research Program relating to the Licensed Compounds and Designated Targets (or cause such records to be maintained) in sufficient detail and in good scientific manner as will properly reflect all work done and results achieved in such performance of the Research Program.

2.5.2 Inspections. During the one-year period following the Effective Date, Sunesis shall provide Millennium with access to the records referred to in Section 2.5.1, upon reasonable request, during ordinary business hours and subject to appropriate confidentiality agreement in the event that Third Party confidential information is involved.

ARTICLE 3
PRODUCT COMMERCIALIZATION

3.1. Commercialization Rights. Subject to the provisions of Section 3.2, Millennium shall be responsible for the establishment and implementation of the strategy, plans and budgets for marketing and promotion of the Licensed Products.

3.2. Co-Promotion Option. Sunesis will have an option (the "Co-Promotion Option") to co-promote each Co-Funded Product in the Co-Funded Territory (excluding [*]), according to the terms and conditions set forth in this Section 3.2. [*]. This Co-Promotion Option may be exercised at Sunesis's discretion on a Co-Funded Product-by-Co-Funded Product and territory-by territory basis [*] for any Co-Funded Product, such [*], by so notifying Millennium in writing within [*] for such Co-Funded Product in such territory. Each such Co-Funded Product for which Sunesis exercises the Co-Promotion Option being referred to as a "Co-Promoted Licensed Product." [*], Millennium shall provide Sunesis with a good faith estimate of the number of field force personnel to be deployed for such Co-Funded Product in the applicable territory for [*], together with a then-current Sales and Marketing Plan for such Co-Funded Product. The estimate of the number of field force personnel to be deployed shall be prepared by the JCC, and shall take into consideration the then-current marketing and promotion practices in the relevant markets and the number and nature of other products, if any, including the detail position, if applicable, that such field force personnel will be selling. In situations where field force personnel will be selling multiple products, the JCC shall make a good faith allocation of the field force personnel's time to be spent on each product. Once Sunesis has exercised the Co-Promotion Option for a Co-Funded Product in a particular territory, the JCC shall discuss in good faith [*]. In the event that Sunesis elects not to exercise the Co-Promotion Option with respect to a Co-Funded Product or fails to notify Millennium in writing of its election within the applicable [*] in any territory, Sunesis shall no longer have the right to exercise the Co-Promotion Option with respect to such Co-Funded Product in such territory.

As used in this Agreement, “co-promote” or “co-promotion” shall mean to promote jointly or joint promotion of a Licensed Product through Millennium’s and Sunesis’s respective sales forces under the same brand name, with Millennium booking all sales of such Co-Promoted Licensed Product, all as shall be more specifically set forth in a co-promotion agreement for each of the territories in which Sunesis co-promotes, such agreement to be negotiated in good faith as soon as practicable following the exercise by Sunesis of the Co-Promotion Option for a Co-Promoted Licensed Product and reflecting the terms set forth in this Article 3 and other customary terms and provisions. A co-promotion agreement shall include the following provisions: (a) Sunesis shall, within thirty (30) days of the end of each calendar quarter, send a written report to Millennium setting out for each applicable territory and each Co-Promoted Licensed Product, the number of field sales force representatives performing co-promotion activities hereunder, and the number and nature of other products, if any, that such field force personnel promoted during such calendar quarter. (b) In the event that [*] that are allocated to Sunesis in the applicable Sales and Marketing Plan, Millennium may terminate Sunesis’s right to co-promote such Co-Promoted Licensed Product in such territory upon written notice to Sunesis.

3.2.1 Scope and Coordination of Co-Promotion. Upon exercise of its Co-Promotion Option with respect to a Co-Promoted Licensed Product, Sunesis shall have the right to field [*] (the “Election Percentage”) of the field force efforts, as such field force is determined in good faith by the JCC, with respect to the Co-Promoted Licensed Product in the applicable territory. The JCC shall be responsible for coordinating the co-promotion activities under this Section 3.2, and shall develop the strategies and programs to optimally carry out marketing and promotional activities, including the assignment of sales force responsibilities in accordance with the Sales and Marketing Plan. It is understood that Sunesis may use one or more contract service organizations for its activities under this Section 3.2, provided that with respect to each Co-Promoted Licensed Product, Sunesis [*] for such Co-Promoted Licensed Product. Sunesis field sales force representatives will be employed by Sunesis and Sunesis shall be responsible for the payment of all such representatives’ salary, out-of pocket expenses (other than for promotional materials), bonus (Sunesis shall adopt reasonable bonus plans/systems to reward sales of the Co-Promoted Licensed Product) and benefits, pension, insurance, social security and any other related obligations.

3.2.2 Co-Promotion Obligations. Sunesis shall employ a professional and trained sales force to co-promote the Co-Promoted Licensed Product, and such sales force shall meet standards of competence and professionalism as are common in the pharmaceutical industry. In all events, Sunesis’s co-promotion shall be conducted as directed by the JCC and in accordance with the then current Sales and Marketing Plan and in accordance with all applicable laws. Millennium shall provide to Sunesis’s sales personnel [*] any Co-Promoted Licensed Product-specific training and promotional materials (including samples), and shall permit Sunesis’s sales personnel to attend and participate in any Co-Promoted Licensed Product-specific seminars and sales training programs [*] Sunesis, in each case as reasonably necessary to effectively promote the particular Co-Promoted Licensed Product consistent with the Sales and Marketing Plan.

3.2.3 Reimbursement. For the performance of the obligations of Sunesis under this Section 3.2 and the co-promotion agreement, Millennium shall reimburse Sunesis as described herein. [*]. In the event that Sunesis sales representatives promote any other products other than such Co-Promoted Licensed Product, then Millennium shall only reimburse Sunesis for the pro rata share of the cost of such Sunesis sales representatives.

3.2.4 Right to Terminate Co-Promotion. Sunesis shall have the right, on a territory-by-territory basis, to terminate its co-promotion of any Co-Promoted Licensed Product, and its obligations under this Section 3.2 with respect to such Co-Promoted Licensed Product, on a Co-Promoted Licensed Product-by-Co-Promoted Licensed Product basis, upon [*] prior written notice to Millennium. Millennium shall have the right, on a territory-by territory basis, to terminate Sunesis's co-promotion of any Co-Promoted Licensed Product, and Millennium's obligations under this Section 3.2 with respect to such Co-Promoted Licensed Product, on a Co-Promoted Licensed Product-by-Co-Promoted Licensed Product basis, (a) [*] after written notice to Sunesis following any material breach of any applicable law, rule or regulation with respect to the co-promotion of such Co-Promoted Licensed Product, or (b) [*] after written notice to Sunesis following any other material breach by Sunesis relating to the co-promotion of such Co-Promoted Licensed Product in such territory if Sunesis does not cure such breach within the applicable specified cure period in Section 3.2.4(a) or (b). Upon termination of co-promotion under this Section 3.2.4 or the co-promotion agreement, Sunesis shall have no right to reimbursement by Millennium under Section 3.2.3 for services provided in the applicable territory after the effective date of such termination.

3.3. Amendment of Sales and Marketing Plan. Promptly upon exercise of Sunesis's Co-Promotion Option hereunder, the JCC shall meet to revise the Sales and Marketing Plan to reflect the sales activities to be undertaken by Sunesis, including the formulation of a mechanism to establish and adjust cost allocation, and the definition of a relevant field sales force promotional activity metric for purposes of allocating the activities of sales representatives.

3.4. Sunesis [*]. To the extent consistent with applicable law, the [*] Sunesis shall [*], on all [*] for all [*] Licensed Products in the applicable country.

3.5. Sunesis Insurance. In the event that Sunesis exercises its Co-Promotion Option, Sunesis shall procure and continue to maintain, at its own cost, the following insurance coverage: Commercial General Liability, including coverage for products and completed operations (maintained for a period of at least five (5) years after expiration or termination of this Agreement) and contractual liability (including coverage for advertising and personal injury). The JCC shall set commercially reasonable and appropriate minimum terms and conditions for such insurance coverage, consistent with then-current pharmaceutical industry practice for commercialization efforts of similar scope to the co-promotion activities undertaken hereunder. Sunesis shall provide Millennium with a certificate of insurance reflecting such coverage.

ARTICLE 4
MANAGEMENT

4.1. Joint Steering Committee. Within thirty (30) days of the Effective Date, the Parties shall establish a joint steering committee ("Joint Steering Committee") to provide oversight and management of the activities undertaken under this Agreement. The Joint Steering Committee will be composed of two (2) representatives of each Party who shall be appointed (and may be replaced at any time) by such Party on prior written notice to the other Party in accordance with this Agreement. At least one (1) representative of a Party on the Joint Steering Committee shall be a vice president or more senior officer of such Party, and the representatives shall have relevant experience and expertise in research, development and commercialization of biopharmaceuticals.

4.1.1 Responsibilities. The Joint Steering Committee shall be responsible for (i) reviewing the efforts of the JDC in the conduct of ongoing development activities and regulatory affairs with respect to Co-Funded Products under Article 2, and resolving disputes as to matters to be decided by the JDC under this Agreement; (ii) reviewing the efforts of the JCC in the conduct of promotional activities of the Parties with respect to Co-Promoted Licensed Products under Article 3, and resolving disputes as to matters to be decided by the JCC under this Agreement; and (iii) taking such other actions as are specifically allocated to the Joint Steering Committee under this Agreement.

4.1.2 Meetings. The Joint Steering Committee shall meet quarterly, or at such frequency as agreed by the respective committee members. Meetings of the Joint Steering Committee shall be at such locations as the Parties agree, and will otherwise communicate regularly by telephone, electronic mail, facsimile or video conference. With the consent of the Parties, other representatives of Sunesis or Millennium may attend the Joint Steering Committee meetings as nonvoting observers based on the subject matter of the meeting.

4.1.3 Decisions. Any approval, determination or other action of the Joint Steering Committee shall require agreement of the members of the Joint Steering Committee, with each Party having one (1) vote. Action that may be taken at a meeting of the Joint Steering Committee also may be taken without a meeting if a written consent setting forth the action so taken is signed by all members of the Joint Steering Committee.

4.1.4 Disputes. In the event the Joint Steering Committee is unable to reach consensus on a particular matter within its jurisdiction or that of the JDC or JCC, the matter shall be referred to executives of the Parties in accordance with Section 14.1, and if such referral does not resolve such matter, then Millennium shall have the right to cast a deciding vote on the Joint Steering Committee. Notwithstanding the foregoing, Millennium shall not have the right to exercise [*] of this Agreement or that [*] Sunesis. In the evaluation of a Diligence Summary pursuant to Section 8.5, any decision of the Joint Steering Committee shall be binding on the Parties, but in the event the Joint Steering Committee is unable achieve agreement with respect to such evaluation, then such dispute shall be resolved as set forth in Section 8.5.

4.2. Joint Sub-Committees. The Parties shall form the JDC and JCC (each, a “Joint Sub-Committee”) in accordance with the terms set forth in Sections 4.3 and 4.4.

4.2.1 Generally. Each Joint Sub-Committee shall meet at such locations as the Parties agree, and will otherwise communicate regularly by telephone, electronic mail, facsimile or video conference. Each Party shall be responsible for all of its own expenses associated with attendance of such meetings, and either Party may replace its respective representatives to each Joint Sub-Committee at any time, with prior written notice to the other Party. Other representatives of Sunesis or Millennium may attend the Joint Sub-Committee meetings as nonvoting observers based on the subject matter of the meeting. From time to time, each Joint Sub-Committee may establish further subcommittees to oversee particular projects or activities, and such further subcommittees will be constituted as such Joint Sub-Committee approves.

4.2.2 Decision Making. Decisions of each Joint Sub-Committee shall be made by unanimous approval of the team leaders from each Party present in person or by other means (e.g., teleconference) at any meeting; provided that at least one member from each Party must be so present and voting. In the event that unanimity is not achieved within a Joint Sub-Committee on a decision required to be made by such Joint Sub-Committee, the matter will be referred to the Joint Steering Committee, which in each case shall promptly meet and endeavor in good faith to resolve such matter in a timely manner. In the event the Joint Steering Committee is unable to reach consensus on a particular matter, such matter shall be resolved in accordance with Section 4.1.4 above.

4.3. Joint Development Committee.

4.3.1 Formation. Promptly following notice from Sunesis that it is exercising its Co-Funding Option, the Parties shall establish a Joint Development Committee ("JDC") with respect to the development of the applicable Co-Funded Product. The JDC will be composed of three (3) representatives of Millennium (at Millennium's discretion) and three (3) representative of Sunesis who shall be appointed (and may be replaced at any time) by the respective Party on written notice to the other Party in accordance with this Agreement. In the event that Sunesis undergoes a Change of Control (as that term is defined in Section 2.2.4(a) above), the JDC shall be dissolved in accordance with Section 2.2.3(e).

4.3.2 Responsibilities. The responsibilities of the JDC shall consist of (i) overseeing the ongoing development of Co-Funded Product(s), (ii) establishing Co-Development Plans and Budgets for Co-Funded Products, (iii) monitoring and approving development activities under such Co-Development Plans and Budgets, (iv) reviewing and approving regulatory correspondence, final study reports and submissions to Regulatory Authorities relating to Co-Funded Products, and (v) making such decisions as are expressly provided in Article 2.

4.3.3 Meetings and Information. The JDC shall meet at least quarterly. Millennium shall notify Sunesis at least two weeks in advance of the date of each JDC meeting.

4.4. Joint Commercialization Committee.

4.4.1 Formation. Upon request by either Party following [*] for a Co-Funded Product and the election to co-promote by Sunesis, the Parties shall establish a Joint Commercialization Committee ("JCC") with respect to commercialization of such Co-Funded Product(s). The JCC will be composed of three (3) representatives of Millennium (at Millennium's discretion) and three (3) representative of Sunesis who shall be appointed (and may be replaced at any time) by the respective Party on written notice to the other Party in accordance with this Agreement. In any event, the JCC shall terminate upon the expiration of all Co-Promotion Options or termination of all co-promotion by Sunesis.

4.4.2 Responsibilities. The JCC shall have responsibility to monitor the conduct and progress of the commercialization strategy, plans, and budgets, including establishment of a plan and budget for the marketing, promotion, sale and distribution of such Co-Funded Product (each a "Sales and Marketing Plan") and managing the promotional activities of the Parties with respect to Co-Promoted Licensed Products under Article 3 above. The JCC shall update the Sales and Marketing Plan periodically, and no less often than annually, and shall include therein detailed plans and budgets for the marketing, promotion, sale and distribution of each Co-Funded Product.

4.4.3 Meetings and Information. The JCC shall meet at least quarterly. Millennium shall notify Sunesis at least two weeks in advance of the date of each JCC meeting.

ARTICLE 5
LICENSES

5.1. Development and Commercialization Licenses.

5.1.1 License under the Sunesis Licensed Technology to Licensed Products. Subject to the terms and conditions of this Agreement, Sunesis hereby grants to Millennium a worldwide, exclusive license under the Sunesis Licensed Technology, with the right to grant and authorize sublicenses as provided in Section 5.2, to Develop, make, have made, use, import, offer for sale, sell and otherwise exploit Licensed Compounds and Licensed Products in the Field.

5.1.2 License under the Sunesis Core Technology to Licensed Products. Subject to the terms and conditions of this Agreement, Sunesis hereby grants to Millennium a worldwide, non-exclusive license under the Sunesis Core Technology to make, have made, use, import, offer for sale and sell Licensed Compounds and Licensed Products in the Field. It is understood that the foregoing license to Sunesis Core Technology shall not include the right to practice Sunesis Core Technology to discover novel compositions.

5.1.3 License for Reverted Licensed Products. Subject to the terms and conditions of this Agreement (including Sections 5.1.1 and 5.1.2 above), with respect to each Reverted Licensed Product Millennium hereby grants to Sunesis a worldwide, exclusive license under Millennium's interest in the Biogen Idec Collaboration Technology, Joint Sunesis-Biogen Collaboration Technology, Development Technology and other Patent Rights and Know How [*] the relevant Licensed Product becomes a Reverted Licensed Product ("Other Millennium Technology"), with the right to grant and authorize sublicenses as provided in Section 5.2, to develop, make, have made, use, import, offer for sale, sell and otherwise exploit such Reverted Licensed Product. It is understood and acknowledged that the licenses granted with respect to Biogen Idec Collaboration Technology, Development Technology and Other Millennium Technology in this Section 5.1.3 extend solely to that technology that is being used on that Reverted Licensed Product as of the date of such reversion to Sunesis, and solely to the extent necessary for Sunesis to continue development and commercialization of such Reverted Licensed Product in the form in which such Reverted Licensed Product existed as of the date of such reversion to Sunesis.

5.2. Grant of Sublicenses. Within a reasonable period of time following grant of any sublicense, to the extent sublicensing is permitted under Section 5.1**,** 9.1.3 and 16.1, the sublicensing Party shall provide the other Party with a summary of such sublicense, including the identity of the Sublicensee (including any Affiliate) and the rights granted with respect thereto for each product and territory, sufficient to allow such other Party to verify any amounts then or subsequently due under Articles 6, 7 and 17 below; provided that such summary may redact

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

confidential information that the sublicensing Party is reasonably prohibited from disclosing under the sublicense agreement. Any sublicense granted under this Section 5.2 shall be consistent with all of the terms and conditions of this Agreement, and subordinate thereto, and the sublicensing Party shall remain responsible to the other Party for the compliance of each such Sublicensee with the obligations due under this Agreement.

5.3 Covenants [*]

5.3.1. Sunesis Covenant [*] Notwithstanding the foregoing, Sunesis shall not be prohibited from collaborating with a Third Party on the development and commercialization of chemical compounds in-licensed from or controlled by such Third Party [*]; provided that Sunesis has not exercised the Co-Funding Option with respect to a Licensed Product [*] and such compounds are in Phase II clinical trials or later stage of development or commercialization at the time of initiation of such collaboration (a "Phase II Drug Collaboration"). Sunesis shall notify Millennium in writing upon entering into a Phase II Drug Collaboration. Nothing in this Section 5.3.1 is intended as the grant of a license by Millennium to Sunesis.

5.3.2. Sunesis Covenant [*]

5.3.3. Millennium Covenant [*] To clarify, notwithstanding the foregoing, Millennium is free to research, develop, market, sell, promote, exploit or license, alone or in collaboration with others, any pharmaceutical compound that is [*] so long as none of them use any Millennium Licensed Technology, Sunesis Licensed Technology (as in effect prior to the Amendment Effective Date) or Collaboration Technology.

5.4 Assay License. Millennium hereby grants to Sunesis a fully-paid, royalty-free worldwide, non-exclusive, perpetual, irrevocable license under Millennium's rights in the assays set forth on Exhibit 1.44 for use by Sunesis solely to comply with Sunesis's obligations under this Agreement.

5.5 No Other Rights; No Implied Licenses. Only the licenses granted or retained pursuant to the express terms of this Agreement shall be of any legal force or effect. No other license rights shall be created by implication, estoppel or otherwise.

ARTICLE 6
PAYMENTS

6.1. Research Milestones. Millennium shall pay to Sunesis the following amounts within thirty (30) days following the first achievement of the following research milestones:

Research Milestones	Payment Amount
1. Identification of the second Development Candidate directed against the Raf Target (it being acknowledged and agreed that [*] is the first such Licensed Compound for the Raf Target):	$ [*]

6.2. Development Milestones.

6.2.1 Development Milestone Payments.

(a) [*]

(b) With respect to each Licensed Product, Millennium shall pay to Sunesis on a Licensed Product-by-Licensed Product basis the following amounts within thirty (30) days following the first achievement by Millennium, its Affiliates or Sublicensees, as the case may be, of each of the following milestones with respect to such Licensed Product:

	Payment Amount	
Development Milestones	[1st Indication	2nd Indication]
[1. Initiation of the first Phase II trial for such Licensed Product in any country:	N/A	$ 750,000
2. Initiation of the first Phase III trial for such Licensed Product in any country:	$3,000,000	$ 2,250,000
3. Filing of an NDA in the U.S. for such Licensed Product:	$5,000,000	$ 3,750,000
4. Filing of an NDA with EMEA for such Licensed Product:	$4,000,000	$ 3,000,000
5. Filing of an NDA in Japan for such Licensed Product:	$2,000,000	$ 1,500,000
6. Regulatory Approval in the U.S. of such Licensed Product:	$8,000,000	$ 6,000,000
7. Regulatory Approval by EMEA of such Licensed Product:	$6,000,000	$ 4,500,000
8. Regulatory Approval in Japan of such Licensed Product:	$4,000,000	$ 3,000,000]

Such milestone payments shall be non-refundable and non-creditable against other amounts due Sunesis hereunder.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

6.2.2 Certain Additional Terms.

(a) Licensed Product-by-Licensed Product Milestones. It is understood that, subject to Section 6.2.2(b), the payments under this Section 6.2 shall be due only once with respect to each Licensed Product.

(b) Multiple Indications. With respect to a particular Licensed Product, [*]

(c) Discontinued Licensed Products. If Millennium ceases all clinical development of a particular Licensed Product, after having made one or more of the payments due under Section 6.2.1 above on the achievement of a particular milestone by such Licensed Product, there shall be no payment due upon the accomplishment of that same milestone with respect to the next Licensed Product that is specifically directed at the same Designated Target to achieve such milestone.

(d) Accrued Milestones. If a development milestone for a Licensed Product under Section 6.2.1 above is achieved with respect to such Licensed Product before a prior development milestone under Section 6.2.1 for such Licensed Product, then the earlier milestone payments shall then also be due with respect to such Licensed Product.

6.2.3 Reports; Payments. Within ten (10) business days of the occurrence of any event which would trigger a milestone payment according to Section 6.2, Millennium shall inform Sunesis of such occurrence. The corresponding payment shall be due thirty (30) days after the occurrence of such event.

6.3. Royalties on Annual Net Sales of Licensed Products.

6.3.1 Licensed Products Generally. Subject to Sections 6.3.2, 6.3.3 and 6.3.4, Millennium shall pay to Sunesis a royalty on Net Sales by Millennium, its Affiliates and their Sublicensees of Licensed Products (other than Net Sales of Co-Funded Products in the Co-Funded Territory) on a Licensed Product-by-Licensed Product basis, equal to the percentage of such Net Sales set forth below:

Annual Net Sales	**Royalty on Net Sales**
Portion of Annual Net Sales of such Licensed Product up to $[*]:	[*]%
Portion of Annual Net Sales of such Licensed Product between $[*] and $[*]:	[*]%
Portion of Annual Net Sales of such Licensed Product between $[*] and $[*]:	[*]%
Portion of Annual Net Sales of such Licensed Product over $[*]:	[*]%

For purposes of the foregoing and Section 6.3.2 below, "Annual Net Sales" shall mean, for a particular Licensed Product, the worldwide Net Sales of such Licensed Product for the particular calendar year. In the event that in a calendar quarter portions of the worldwide Net Sales of a particular Licensed Product are subject to royalty obligations under both Sections 6.3.1 and 6.3.2, the applicable royalty rate under Section 6.3.2 shall be applied to worldwide Net Sales based on the proportion of worldwide Net Sales generated in the Co-Funded Territory.

6.3.2 Compensation for Co-Funded Products.

(a) Subject to Sections 6.3.2(b), 6.3.2(c), 6.3.3 and 6.3.4, in consideration for the co-funding by Sunesis, Millennium shall pay to Sunesis an amount [*].

(b) [*]

[*]

6.3.3 Third Party Patents.

(a) If: (i) a [*] of a Third Party should be in force in any country during the Term of this Agreement covering the practice of the Sunesis Licensed Technology or Sunesis Core Technology as licensed to Millennium under Section 5.1 with respect to the manufacture, use or sale of any Licensed Product, (ii) it should prove in Millennium's reasonable judgment, after consultation with Sunesis, [*] for Millennium to commercialize such Licensed Product without obtaining a royalty bearing license from such Third Party [*] (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Millennium under Section 5.1 with respect to such Licensed Product, then Millennium shall be entitled to a credit against the royalty payments due under the other provisions of this Section 6.3 with respect to the same Licensed Product in such country of an amount equal to [*] of the royalty paid to such Third Party for such Licensed Product in such country, arising from the practice of such Sunesis Licensed Technology or Sunesis Core Technology with respect to the manufacture, use or sale of the Licensed Product in said country, with such credit not to exceed [*] of the royalty otherwise due under this Agreement for such Licensed Product in such country.

(b) If: (i) a [*] of a Third Party should be in force in any country during the Term of this Agreement covering the practice of the Biogen Idec Collaboration Technology, Joint Sunesis-Biogen Collaboration Technology, Development Technology or Other Millennium Technology licensed to Sunesis under Section 5.1.3, in each case with respect to the manufacture, use or sale of any Reverted Licensed Product, (ii) it should prove in Sunesis's reasonable judgment, after consultation with Millennium, [*] for Sunesis to commercialize such Reverted Licensed Product without obtaining a royalty bearing license from such Third Party [*] (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Sunesis under Section 5.1.3 with respect to such Reverted Licensed Product, then Sunesis shall be entitled to a credit against the royalty payments due under Section 6.4 with respect to the same Reverted Licensed Product in such country of an amount equal to [*] of the royalty paid to such Third Party for such Reverted Licensed Product in such country, arising from the practice of the intellectual property described above with respect to the manufacture, use or sale of the Reverted Licensed Product in said country, with such credit not to exceed [*] of the royalty otherwise due under this Agreement for such Reverted Licensed Product in such country.

6.3.4 Royalty Reduction. The royalty rates set forth in Sections 6.3.1 (but not 6.3.2) used to calculate royalties payable on Net Sales of a Licensed Product (excluding a terminated PDK Product) in a country shall be [*] by [*] with respect to sales in the U.S. or Japan during any portion of the applicable period under Section 6.5 in which [*] the Sunesis Licensed Patents or Sunesis Core Technology Covers the sale or use of such Licensed Product in such country.

6.4. Royalties on Net Sales of Reverted Licensed Products. Sunesis shall pay Millennium at a royalty rate equal to the royalty rate provided under Section 6.3.1 with respect to Net Sales of Reverted Licensed Products by Sunesis, its Affiliates and their Sublicensees; provided, however, that such royalty rate shall be [*] by [*] with respect to sales in the U.S. or Japan during any portion of the applicable period under clause (ii) in Section 6.5.1 in which [*] the Biogen Idec Collaboration Patents, Joint Sunesis-Biogen Collaboration Patents, Development Technology or Other Millennium Technology Covers the sale or use of such Reverted Licensed Product in such country.

6.5. Royalty Term.

6.5.1 The royalties due pursuant to Section 6.3 and Section 6.4 above shall be payable on a country-by-country and Product-by-Product basis commencing on the first commercial sale in a country and continuing until the later of: (i) the expiration of the last Valid Claim of (a) the Sunesis Licensed Patents or Sunesis Core Technology Covering the sale or use of the relevant Licensed Product in such country or (b) the Biogen Idec Collaboration Patents, Joint Sunesis-Biogen Collaboration Patents, Development Technology or Other Millennium Technology Covering the sale or use of the relevant Reverted Licensed Product in such country, or (ii) the tenth (10^{th}) anniversary of the first commercial sale of such Product in such country.

6.5.2 Millennium acknowledges that it will continue to benefit from its license under, and the transfer to Millennium of certain elements of, the Sunesis Collaboration Technology and Sunesis Core Technology, the co-funding payments pursuant to this Agreement and Millennium's own development of Know-How derived from the practice of such Sunesis licenses and Millennium's use of such Sunesis Collaboration Technology and Sunesis Core Technology, even after the expiration of all Patent Rights that claim a Licensed Product in a particular country. In addition, Millennium and Sunesis acknowledge the application of a uniform royalty structure and compensation to Sunesis for its co-funding payments in the form of an additional royalty payment amount throughout the period under clause (ii) in Section 6.5.1. The Parties acknowledge that such structure is more convenient to the Parties, facilitates the payment of compensation between the Parties for co-funding commitments and access to Know How and reduces accounting burdens on the Parties. Accordingly, the Parties have agreed to apply the royalty structure as provided in this Article 6.

ARTICLE 7
PAYMENTS, BOOKS AND RECORDS

7.1. Royalty Reports and Payments. After the first sale of a Product on which royalties are payable by a Party hereunder, such Party shall make quarterly written reports to the other Party within sixty (60) days after the end of each calendar quarter, stating in each such report, separately the number, description, and aggregate Net Sales, by territory, of each such Product sold during the calendar quarter upon which a royalty is payable under Section 6.3 or Section 6.4 above, as applicable. Concurrently with the making of such reports, such Party shall pay to the other Party royalties due at the rates specified in Section 6.3 or Section 6.4 above, as applicable.

7.2. Payment Method. All payments due under this Agreement shall be made by bank wire transfer in immediately available funds to a bank account designated by the Party owed such payment. All payments hereunder shall be made in U.S. dollars. Any payments that are not paid on the date such payments are due under this Agreement shall bear interest to the extent permitted by applicable law at a rate equal to the 3-month LIBOR rate at the close of business on the date such payment is due, plus an additional two percent (2%), calculated on the number of days such payment is delinquent.

7.3. Place of Royalty Payment; Currency Conversion. The functional currency for accounting will be U.S. dollars. Except as the Parties otherwise mutually agree, for billing and reporting, Development Costs and Net Sales will be translated, if necessary, into U.S. dollars using the currency exchange rates quoted by *Bloomberg Professional*, a service of Bloomberg L.P., or in the event *Bloomberg Professional* is not available, then the Eastern U.S. edition of *The Wall Street Journal* on the last business day of the applicable calendar quarter.

7.4. Records; Inspection. Each Party shall keep, and shall ensure that its Affiliates keep, complete, true and accurate books of account and records for the purpose of determining the amounts payable under this Agreement. Such books and records shall be kept at the principal place of business of such Party, for at least three (3) years following the end of the calendar quarter to which they pertain. Such records will be open for inspection by a public accounting firm to whom the audited Party has no reasonable objection and subject to such accounting firm entering into a satisfactory confidentiality agreement, solely for the purpose of determining the payments to the other Party hereunder. Such inspections may be made no more than twice each calendar year, at reasonable times and on reasonable notice. Inspections conducted under this Section 7.4 shall be at the expense of the auditing Party, unless a variation or error producing an increase exceeding [*] percent ([*]%) of the amount stated for the period covered by the inspection is established in the course of any such inspection, whereupon all reasonable costs relating to the inspection for such period and any unpaid or overpaid amounts that are discovered will be promptly paid or refunded by the appropriate Party, in each case together with interest noted in Section 7.2 thereon from the date such payments were due (if underpaid) or paid (if overpaid).

7.5. Withholding Taxes. Each Party shall pay any and all taxes levied on account of amounts payable to it under this Agreement. If laws or regulations require that taxes be withheld, the paying Party will (i) deduct those taxes from the remittable payment, (ii) timely pay the taxes to the proper authority, and (iii) send proof of payment to the other Party within sixty (60) days following that payment.

ARTICLE 8
DILIGENCE

8.1. Diligence; Reports. Millennium shall use Commercially Reasonable and Diligent Efforts to develop and commercialize Co-Funded Products within the Field. Millennium agrees to keep Sunesis fully informed regarding the Development and commercialization activities with respect to each Co-Funded Product by providing reports to Sunesis at least quarterly regarding ongoing activities being undertaken with respect to Co-Funded Products. In addition, Millennium shall provide Diligence Summaries to Sunesis with respect to each [*]. This Section 8.1 shall not limit other provisions of this Agreement that address the provision of information regarding Licensed Products.

8.2. Reversion of a Co-Funded Product. If Millennium fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Co-Funded Product, and Millennium shall continue to fail to use Commercially Reasonable and Diligent Efforts to develop and commercialize such Co-Funded Product for [*] after written notice thereof from Sunesis, or in the event that Sunesis terminates this Agreement pursuant to Section 13.2 for Millennium's breach, pursuant to Section 13.3 for Millennium's bankruptcy or in the event that Millennium terminates this Agreement pursuant to Section 13.4 for convenience with respect to a Co-Funded Product, Sunesis shall have the right to assume the development and commercialization of such Co-Funded Product, subject to the terms and conditions of this Section 8.2, upon written notice to Millennium. Upon the effective date of such notice from Sunesis, such Co-Funded Product shall be designated a "Reverted Licensed Product", the terms set forth in Section 1 of Exhibit 8.2 attached hereto shall thereafter apply, and Sunesis shall pay royalties to Millennium as provided under Section 6.4 on Net Sales of such Reverted Licensed Product by Sunesis, its Affiliates or Sublicensees.

8.3. Diligence for a Reverted Licensed Product. Sunesis shall use Commercially Reasonable and Diligent Efforts to develop and commercialize each Reverted Licensed Product. Sunesis agrees to keep Millennium fully informed regarding the development and commercialization activities with respect to each Reverted Licensed Product, including by providing Millennium with reports at least quarterly regarding ongoing activities being undertaken with respect to Reverted Licensed Products. In addition, Sunesis shall provide Millennium with a Diligence Summary with respect to each Reverted Licensed Product on a semi-annual basis during the Term of this Agreement.

8.4. Termination of a Reverted Licensed Product. If Sunesis fails to use Commercially Reasonable and Diligent Efforts to develop and commercialize a Reverted Licensed Product, and Sunesis shall continue to fail to use Commercially Reasonable and Diligent Efforts to develop and commercialize such Reverted Licensed Product for sixty (60) days after written notice thereof from Millennium, then such Reverted Licensed Product shall cease to be a Reverted Licensed Product, and the license granted to Sunesis under Section 5.1.3 shall terminate with respect to such Reverted Licensed Product. Thereafter, such Reverted Licensed Product shall be a Licensed Product and subject to Millennium's licenses under Section 5.1 and obligations to pay royalties and milestones to Sunesis pursuant to Article 6. In addition, the terms set forth in Section 2 of Exhibit 8.2 shall apply to such Reverted Licensed Product.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

8.5. Disputes. In the event that there is a good faith dispute as to whether the activities described in a Diligence Summary constitute Commercially Reasonable and Diligent Efforts to develop and commercialize the applicable Co-Funded Product or Reverted Licensed Product, then either Party may refer the dispute for a prompt determination by the Joint Steering Committee. In the event that the Joint Steering Committee is unable to reach consensus on such determination, then the matter shall be referred to the Parties' respective Chief Medical Officers (or the equivalent if there is no such Chief Medical Officer of a Party). Upon such request, the Chief Medical Officers shall make themselves reasonably available to meet, and shall meet either by telephone or if, specifically requested, in person, to attempt to resolve such matter, and shall thereafter continue to use good faith efforts to attempt to resolve such matter unless it becomes clear that the matter cannot be resolved by mutual agreement. Thereafter either Party may pursue such legal process as is otherwise available under applicable law.

ARTICLE 9
INTELLECTUAL PROPERTY

9.1. Ownership; Disclosure.

9.1.1 Collaboration Technology.

(a) Raf Technology. All right, title, and interest in and to the Sunesis Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents, the subject of which are inventions that were developed in the course of activities directed to the Raf Target or to the discovery, research, or development of Licensed Compounds which are Target Selective to the Raf Target or Licensed Products incorporating such Licensed Compounds (the "Raf Patents") were jointly and equally owned by Biogen Idec and Sunesis under the Original Agreement. Pursuant to the Millennium-Biogen Agreement, Biogen Idec has, with the consent of Sunesis as provided in the Three Party Agreement, assigned all of its right, title and interest in and to the Raf Patents to Millennium; and from and after the Effective Date the Raf Patents shall be jointly owned by Millennium and Sunesis.

(b) Sunesis Collaboration Technology. Subject to Section 9.1.1(a), all right, title, and interest in and to the Sunesis Collaboration Technology shall be owned by Sunesis, subject to the licenses granted to Millennium under Article 5.

(c) Joint Sunesis-Biogen Collaboration Technology. Pursuant to the Millennium-Biogen Agreement, Biogen Idec has, with the consent of Sunesis as provided in the Three Party Agreement, assigned to Millennium all of its right, title and interest in and to the Joint Sunesis-Biogen Collaboration Patents and Joint Sunesis-Biogen Collaboration Know-How that are included in the Assigned IP (as defined in the Millennium-Biogen Agreement) and that, in each case, are [*] a Licensed Compound (the "Licensed Compound Joint Technology") and has granted a license to Millennium under Biogen Idec's right, title and interest in and to all other Joint Sunesis-Biogen Patents and Joint Sunesis-Biogen Know-How (the "Other Joint Technology"). All right, title and interest in and to the Licensed Compound Joint Technology shall be jointly owned by the Parties. All right, title and interest in and to the Other Joint Technology shall be jointly owned by Sunesis and Biogen Idec (subject to the licenses granted to Millennium). Except as expressly provided in this Agreement, neither Party shall have any

obligation to account to the other for profits, or to obtain any approval of the other Party to license, exploit or enforce the Licensed Compound Joint Technology, by reason of joint ownership thereof, and each Party hereby waives any right it may have under the laws of any jurisdiction to require any accounting or consent related thereto. It is understood and agreed that all Joint Sunesis-Biogen Collaboration Technology that is jointly owned pursuant to Section 9.1.1(a) and this Section 9.1.1(c) shall be subject to the licenses granted under Article 5 and Section 16.1.

(d) Excluded Compounds. For the avoidance of doubt, to the extent a Joint Sunesis-Biogen Collaboration Patent discloses any use of an Excluded Compound (as defined in the Original Agreement), the composition of matter of which is separately owned by one Party, the other Party shall not have, merely as a result of its joint ownership of such Joint Sunesis-Biogen Collaboration Patent, any right, title or interest in or to such Excluded Compound.

9.1.2 Development Technology. All right, title and interest in and to the Development Technology shall, as between the Parties, be owned solely by Millennium. Sunesis hereby assigns to Millennium all of Sunesis's and its Affiliates' rights in and to the Development Technology (including all patent and other intellectual property rights therein), subject to the licenses granted to Sunesis under Article 5.

9.1.3 PDK Technology. Sunesis shall solely own all Know-How made or developed after the Amendment Effective Date, solely by or under authority of Sunesis or its Affiliates, in the course of performing any activity under this Agreement directed to the PDK Target or directly related to the development, manufacturing or commercialization of a PDK Compound or PDK Product, and all Patent Rights that claim or cover any such Know-How (collectively, the "PDK Technology"). To the extent that Millennium Controls Patent Rights or Know-How that is generated after the Amendment Effective Date [*], Millennium [*].

9.2. Patent Prosecution. Subject to the rights of Biogen Idec under the Millennium-Biogen Agreement:

9.2.1 Sunesis Core Technology. Sunesis shall have the right to control the preparation, filing, prosecution and maintenance of patent applications and patents directed to Sunesis Core Technology using patent counsel of Sunesis's choice, provided that such decisions made by Sunesis in the preparation, filing, prosecution, and maintenance of such patents and patent applications shall be reasonable and Sunesis shall employ reasonable efforts not to substantially negatively impact Millennium's rights hereunder.

9.2.2 Collaboration Patents and Development Patents.

(a) Millennium shall have the first right, using in-house or outside legal counsel selected by Millennium, subject to approval, not to be unreasonably withheld, by Sunesis, to prepare, file, prosecute, maintain, and obtain extensions throughout the world of Collaboration Patents and Patent Rights in the Development Technology that claim or cover the Raf Target, Licensed Compounds or Licensed Products, or the use of manufacture thereof. Millennium shall: (a) ensure that Sunesis receives copies of all

correspondence between Millennium or outside legal counsel or any governmental offices relating to such preparation, filing, prosecution, maintenance, and obtaining of extensions, of such Collaboration Patents and other Patent Rights under this Section 9.2.2(a), (b) timely consult with Sunesis regarding all substantive matters associated with such activities, (c) use reasonable efforts to periodically advise Sunesis on such activities and to respond to any reasonable inquiries Sunesis may from time to time raise in respect of such activities, and (d) not substantially negatively impact Sunesis's rights under such Collaboration Patents. As used in this Article 9, "prosecution" shall include interferences, re-examinations, reissues, oppositions and the like.

(b) Sunesis shall have the first right, using in-house or outside legal counsel selected by Sunesis, subject to approval, not to be unreasonably withheld, by Millennium, to prepare, file, prosecute, maintain, and obtain extensions throughout the world of (i) Collaboration Patents and Patent Rights in the Development Technology that claim or cover the PDK Target, PDK Compounds or PDK Products, or the use of manufacture thereof and (ii) Patent Rights in the PDK Technology. Sunesis shall: (a) ensure that Millennium receives copies of all correspondence between Sunesis or outside legal counsel or any governmental offices relating to such preparation, filing, prosecution, maintenance, and obtaining of extensions, of such Collaboration Patents and other Patent Rights under this Section 9.2.2(b), (b) timely consult with Millennium regarding all substantive matters associated with such activities, (c) use reasonable efforts to periodically advise Millennium on such activities and to respond to any reasonable inquiries Millennium may from time to time raise in respect of such activities, and (d) not substantially negatively impact Millennium's rights under such patents. Promptly after the Amendment Effective Date, Millennium shall cooperate with Sunesis to promptly transfer relevant prosecution materials for all such Patent Rights to Sunesis.

9.2.3 Prosecution Costs. All costs [*] associated with filing, prosecuting, issuing, maintaining, and extending (i) patent applications and patents within the Sunesis Core Technology and Patent Rights described in Section 9.2.2(b) shall be borne by Sunesis; and (ii) Patent Rights described in Section 9.2.2(a) shall be borne by Millennium.

9.2.4 Cooperation. Each Party will cooperate fully with the other Party and provide all information and data, and sign any documents, reasonably necessary and requested by the other Party for the purpose of preparing, filing and prosecuting patent applications pursuant to this Section 9.2.

9.2.5 Abandonment.

(a) Millennium may elect to decline to file or, having filed, decline to further prosecute and maintain any Collaboration Patent or other Patent Right under Section 9.2.2(a), in which event Millennium shall provide Sunesis with written notice thereof prior to the expiration of any deadline, without considering any possible extensions thereof, relating to such activities, but in any event at least thirty five (35) business days prior notice. In such circumstances Sunesis shall have the right to decide, with reason and with written notice at least thirty (30) business days prior to the deadline, that Millennium should continue to file or prosecute such Patent Right. Millennium shall then

have the option to decide, with at least twenty (20) business days notice to Sunesis to: (i) continue to file or prosecute such Patent Right at its cost and expense, or (ii) allow Sunesis to file or prosecute such Patent Right at its own cost and expense using counsel of its own choice. In the event that Millennium elects option (ii), then Millennium shall cooperate with Sunesis to promptly transfer relevant prosecution materials to Sunesis.

(b) Sunesis may elect to decline to file or, having filed, decline to further prosecute and maintain any Collaboration Patent or other Patent Right under Section 9.2.2(b), in which event Sunesis shall provide Millennium with written notice thereof prior to the expiration of any deadline, without considering any possible extensions thereof, relating to such activities, but in any event at least thirty five (35) business days prior notice. In such circumstances Millennium shall have the right to decide, with reason and with written notice at least thirty (30) business days prior to the deadline, that Sunesis should continue to file or prosecute such Patent Right. Sunesis shall then have the option to decide, with at least twenty (20) business days notice to Millennium to: (i) continue to file or prosecute such Patent Right at its cost and expense, or (ii) allow Millennium to file or prosecute such Patent Right at its own cost and expense using counsel of its own choice. In the event that Sunesis elects option (ii), then Sunesis shall cooperate with Millennium to promptly transfer relevant prosecution materials to Millennium.

(c) It is understood and agreed that transfer of prosecution of particular Patent Rights pursuant to subsection (ii) in both Sections 9.2.5(a) and 9.2.5(b) above shall not affect the ownership or licenses otherwise provided in this Agreement.

9.3. Enforcement. Subject to the rights of Biogen Idec under the Millennium-Biogen Agreement:

9.3.1 Notice. In the event a Party becomes aware of any actual or potential infringement or misappropriation of the Sunesis Licensed Technology or Biogen Idec Collaboration Technology that relates to the Raf Target or Licensed Compounds or Licensed Products (a "Subject Infringement"), such Party shall notify the other Party.

9.3.2 Millennium. Millennium shall have the sole right, but not the obligation, to take legal action to:

(a) enforce and defend the Sunesis Licensed Technology against Subject Infringements by Third Parties at its sole cost and expense. If, within [*] following a request by Sunesis to do so, Millennium fails to use commercially reasonable efforts to take such action to enforce the Sunesis Licensed Patents with respect to a Subject Infringement, Sunesis or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

(b) enforce and defend any actual or potential infringement or misappropriation of the Biogen Idec Collaboration Technology that relates to the Raf Target or Licensed Compounds or Licensed Products. If, within [*] following a request by Sunesis to do so, Millennium fails to use commercially reasonable efforts to take such action to enforce

and defend any actual or potential infringement or misappropriation of the Biogen Idec Collaboration Technology that relates to the Raf Target or Licensed Compounds or Licensed Products, Sunesis or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

9.3.3 Sunesis. To the extent a Subject Infringement is not covered by Section 9.3.2 above, Sunesis (or its designee) shall have the initial right, but not the obligation, to take reasonable legal action to enforce and defend the Sunesis Licensed Technology against such Subject Infringements by Third Parties at its sole cost and expense. If, within [*] following a request by Millennium to do so, Sunesis fails to take such action to enforce the Sunesis Licensed Patents with respect to such Subject Infringement, and the Subject Infringement is in a field not then licensed exclusively to Sunesis hereunder, Millennium or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

9.3.4 Cooperation. If a Party (the "Controlling Party") brings an action in accordance with this Section 9.3 (an "Infringement Action"), then the other Party (the "Cooperating Party") shall cooperate as reasonably requested, at such Controlling Party's expense, in the pursuit of such Infringement Action, including if necessary by joining as a nominal Party to the Infringement Action. In any case, the Cooperating Party shall have the right, even if not required to be joined, to participate in such Infringement Action with its own counsel at its own expense. The costs and expenses of the Infringement Action shall be the responsibility of the Controlling Party, and any damages or other monetary rewards or settlement payments actually received and retained by the Controlling Party shall first be applied to reimburse the Controlling Party's out-of-pocket expenses directly attributed to the Infringement Action, then the other Party's out-of-pocket expenses directly attributed to the Infringement Action, then the other Party's out-of-pocket expenses directly attributed to the Infringement Action**,** and the remainder shall be shared as follows: [*].

9.3.5 PDK Products. In the event a Party becomes aware of any actual or potential infringement or misappropriation of the Millennium Licensed Technology or PDK Technology, such Party shall notify the other Party. Sunesis shall have the sole right, but not the obligation, to take legal action to enforce and defend the Millennium Licensed Technology and PDK Technology against infringement by Third Parties at its sole cost and expense. If, within [*] following a request by Millennium to do so, Sunesis fails to use commercially reasonable efforts to take such action to enforce and defend Millennium Licensed Technology or PDK Technology with respect to such infringement, Millennium or its designee shall, in its sole discretion, have the right, at its sole expense, to take such action.

ARTICLE 10
CONFIDENTIALITY

10.1. Confidentiality. During the Term of this Agreement and for a period of [*] years following the expiration or earlier termination hereof, each Party shall maintain in confidence the Confidential Information of the other Party, shall not use or grant the use of the Confidential Information of the other Party except as expressly permitted hereby, and shall not disclose the Confidential Information of the other Party (in each case, irrespective of whether such Confidential Information is also the Confidential Information of the receiving Party), except (i)

on a need-to-know basis to such Party's directors, officers and employees, (ii) to such Party's consultants performing work contemplated by the Agreement, and to any bona fide subcontractor performing work for such Party hereunder, or (iii) to the extent such disclosure is reasonably necessary in connection with such Party's activities under rights and licenses expressly authorized by this Agreement (including the permitted sublicensees). To the extent that disclosure to any person is authorized by this Agreement, prior to disclosure, a Party shall obtain written agreement of such person to hold in confidence and not disclose, use or grant the use of the Confidential Information of the other Party except as expressly permitted under this Agreement. Each Party shall notify the other Party promptly upon discovery of any unauthorized use or disclosure of the other Party's Confidential Information.

10.2. Permitted Use and Disclosures. The confidentiality obligations under this Article 10 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 (to the extent not prohibited by law or court order), and consult with the other Party with respect to such disclosure to the extent reasonably protectable and provide the other party reasonable opportunity to object to any such disclosure or to request confidential treatment thereof. Notwithstanding the provisions of this Section, either Party may, to the extent necessary, disclose Confidential Information of the other Party, to any governmental or regulatory authority in connection with the development of a product which it has the right to develop under this Agreement.

10.3. Nondisclosure of Terms. Each of the Parties hereto agrees not to disclose the financial terms of this Agreement to any Third Party without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld, except (a) to such Party's attorneys, advisors, investors, potential *bona fide* collaborators and Sublicensees, and others on a need-to-know basis under circumstances that reasonably protect the confidentiality thereof; (b) or to the extent required by law (and with appropriate requests made for confidential treatment), including filings required to made by law with the Securities and Exchange Commission or any national securities exchange; provided, however, that, with respect to any filing required to made by law with the Securities and Exchange Commission or any national securities exchange, the Party subject to such filing requirement shall, at least ten (10) business days in advance of any such filing, provide the other Party with a draft set of redactions to this Agreement for which confidential treatment will be sought, reasonably incorporate the other Party's comments as to additional terms it would like to see redacted, and seek confidential treatment for such additional terms (except only in the limited circumstances where confidential treatment is in the opinion of outside counsel unavailable); or (c) to Biogen Idec, to the extent required under the Three Party Agreement or Millennium-Biogen Agreement. Notwithstanding the foregoing, (i) Sunesis may issue the press release to be mutually agreed by the Parties, and (ii) each Party may disclose the information contained in such press release (and related Securities and Exchange Commission filing) without the consent of the other Party.

10.4. Publication.

10.4.1 By Sunesis. Any manuscript by Sunesis on subject matter in connection with the Research Program relating to the Raf Target or Licensed Compounds to be published or publicly disclosed shall be subject to the prior review of Millennium at least [*] prior to submission. Further, to avoid loss of patent rights as a result of premature public disclosure of patentable information, Millennium shall notify Sunesis in writing within [*] after receipt of any disclosure whether Millennium desires to file a patent application on any invention disclosed in such scientific results. In the event that Millennium desires to file such a patent application, Sunesis shall withhold publication or disclosure of such scientific results until the earlier of (i) a patent application is filed thereon, (ii) the Parties determine after consultation that no patentable invention exists, or (iii) [*] after receipt by Sunesis of Millennium's written notice of Millennium's desire to file such patent application. Further, if such scientific results contain the information of Millennium that is subject to use and nondisclosure restrictions under this Article 10, Sunesis agrees to remove such information from the proposed publication or disclosure. For clarity, nothing in this Section 10.4 shall be deemed to limit the publication or disclosure right of Sunesis with respect to a Reverted Licensed Product. Sunesis shall have the right, but not the obligation, to publish or publicly disclose, in its sole discretion, any manuscript containing scientific or clinical results generated during the Term relating to the PDK Target, PDK Compounds or PDK Products, and shall provide Millennium with a courtesy copy of such manuscript prior to its publication.

10.4.2 By Millennium. Millennium shall have the right, but not the obligation, to publish or publicly disclose, in its sole discretion, any manuscript containing scientific or clinical results generated during the Term relating to the Raf Target, Licensed Compounds or Licensed Products, and shall provide Sunesis with a courtesy copy of such manuscript prior to its publication.

10.4.3 Patent Applications. Following the filing of any patent application within the Collaboration Technology, in the period prior to the publication of such a patent application, neither Party shall make any written public disclosure regarding any invention claimed in such patent application without the prior consent of the other Party.

ARTICLE 11
REPRESENTATIONS AND WARRANTIES

11.1. Warranty. Each Party represents and warrants on its own behalf and on behalf of its Affiliates that as of the Amendment Effective Date:

(i) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

(ii) It has the legal power and authority to enter into this Agreement and to perform all of its obligations hereunder.

(iii) This Agreement is a legal and valid obligation binding upon it and enforceable in accordance with its terms.

(iv) All necessary consents, approvals and authorizations of all governmental authorities and other persons or entities required to be obtained by such Party in connection with this Agreement have been obtained.

(v) The execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not conflict with or violate any requirement of applicable laws, regulations or orders of governmental bodies; and (b) do not conflict with, or constitute a default under, any contractual obligation of such Party. Neither Party will enter into any agreement with any Third Party that conflicts with the terms of this Agreement.

(vi) Such Party requires, and shall require, that all of its employees and consultants involved in the Development, manufacture or commercialization of Licensed Compounds, Licensed Products, PDK Compounds, PDK Products, Reverted Compounds or Reverted Licensed Products have entered into written agreements obligating such person to assign any rights s/he may have in any inventions made during such work to such Party.

11.2. Additional Warranty of Sunesis. Sunesis represents and warrants as of the Effective Date that:

(a) to the best of its knowledge, the practice of the Sunesis Core Technology with respect to the Licensed Compounds is not generally dominated by Patent Rights of a Third Party;

(b) Sunesis has not received any notice of infringement from any Third Party relating to the Sunesis Core Technology or Sunesis Licensed Technology;

(c) Sunesis has not received any notice challenging the validity of the Sunesis Licensed Technology or Sunesis Core Technology; and

(d) to the best of its knowledge, the Sunesis Licensed Technology and Sunesis Core Technology with respect to Licensed Compounds is legally possessed by Sunesis and has not been misappropriated from any Third Party.

11.3. Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE COLLABORATION TECHNOLOGY, SUNESIS CORE TECHNOLOGY, DEVELOPMENT TECHNOLOGY, OTHER MILLENNIUM TECHNOLOGY, LICENSED COMPOUNDS, OTHER COMPOUNDS, LICENSED PRODUCTS, PDK TECHNOLOGY, PDK COMPOUNDS, PDK PRODUCTS, DESIGNATED TARGETS OR CONFIDENTIAL INFORMATION, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OF ANY COLLABORATION TECHNOLOGY OR PDK TECHNOLOGY, PATENTED OR UNPATENTED, OR NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.

11.4. Additional Warranties of Millennium. Millennium represents and warrants as of the Amendment Effective Date that (a) the Millennium Licensed Patents are the only Patent Rights owned or controlled by Millennium or its Affiliates that [*] to the PDK Compounds or PDK Products, (b) Millennium has not transferred, whether by license or otherwise, the Millennium Licensed Technology to any Affiliate, (c) no compounds were Synthesized during the [*] by or on behalf of Millennium in the course of activities [*] the PDK Target and through the use of the Sunesis Licensed Technology, and (d) [*].

ARTICLE 12
INDEMNIFICATION

12.1. Millennium. Millennium shall indemnify, defend and hold harmless Sunesis and its Affiliates and their respective directors, officers, employees, agents and their respective successors, heirs and assigns from and against any losses, costs, claims, damages, liabilities or expense (including reasonable attorneys' and professional fees and other expenses of litigation) (collectively, "Liabilities") resulting from any claims, demands, actions or other proceedings by any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Licensed Products by Millennium or its Affiliates or Sublicensees or other designees (except with respect to claims of infringement or violation of intellectual property rights, which shall be governed solely by clause (iv)); (ii) the breach by Millennium of the representations and warranties made in this Agreement; (iii) [*] Millennium or any of its agents or employees or failure of Millennium or any of its agents or employees to comply with applicable laws and regulations; or (iv) a claim that the use, manufacture, sale or importation of a Licensed Product infringes or violates the intellectual property rights of a Third Party (other than if such infringement or violation results solely from the practice of any Sunesis Licensed Technology (excluding any Joint Sunesis-Biogen Idec Collaboration Patents and Joint Sunesis-Biogen Idec Collaboration Know-How) and Sunesis Core Technology in accordance with this Agreement); except, in each of cases (i)–(iv), to the extent such Liabilities result from a material breach of this Agreement by Sunesis, [*] Sunesis or any of its agents or employees (including sales representatives involved in co-promoting any Co-Promoted Licensed Product) or failure of Sunesis or any of its employees or agents to comply with applicable laws or regulations.

12.2. Sunesis. Sunesis agrees to indemnify, defend and hold harmless Millennium and its Affiliates and their respective directors, officers, employees, agents and their respective heirs and assigns from and against any Liabilities resulting from any claims, demands, actions or other proceedings by any Third Party to the extent resulting from: (i) the manufacture, use, sale, handling or storage of Co-Promoted Licensed Products, PDK Products or Reverted Licensed Products by Sunesis or its Affiliates or Sublicensees or other designees, (ii) the breach by Sunesis of its representations and warranties made in this Agreement or the Original Agreement, (iii) [*] Sunesis or any of its agents or employees or failure of Sunesis or any of its agents or employees to comply with applicable laws and regulations; except, in each case, to the extent such Liabilities result from a breach of this Agreement by Millennium, [*] Millennium or any of its agents or employees (including sales representatives involved in co-promoting any Co-Promoted Licensed Product) or failure of Millennium or any of its employees or agents to

comply with applicable laws or regulations, or (iv) a claim arising after the Amendment Effective Date that the use, manufacture, sale or importation of a PDK Product infringes or violates the intellectual property rights of a Third Party (other than if such infringement or violation results solely from the practice of any PDK Technology in accordance with this Agreement).

12.3. Procedure. If a Party (the "Indemnitee") intends to claim indemnification under this Article 12, it shall promptly notify the other Party (the "Indemnitor") in writing of any claim, demand, action or other proceeding for which the Indemnitee intends to claim such indemnification, and the Indemnitor shall have the right to participate in, and, to the extent the Indemnitor so desires, to assume the defense thereof with counsel mutually satisfactory to the Parties; provided, however, that an Indemnitee shall have the right to retain its own counsel, with the fees and expenses to be paid by the Indemnitor, if representation of such Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or potential differing interests between the Indemnitee and any other Party represented by such counsel in such proceeding. The obligations of this Article 12 shall not apply to amounts paid in settlement of any claim, demand, action or other proceeding if such settlement is effected without the consent of the Indemnitor, which consent shall not be withheld or delayed unreasonably. The failure to deliver written notice to the Indemnitor within a reasonable time after the commencement of any such action, if prejudicial to its ability to defend such action, shall relieve the Indemnitor of any obligation to the Indemnitee under this Article 12. The Indemnitee, its employees and agents, shall reasonably cooperate with the Indemnitor and its legal representatives in the investigation of any claim, demand, action or other proceeding covered by this Article 12. The Indemnitor shall not, without the Indemnitee's consent, which consent shall not be withheld or delayed unreasonably, consent to the entry of any judgment or accept any settlement with respect to such claim, demand, action or proceeding which imposes liability not covered by this indemnification or restrictions on the Indemnitee.

ARTICLE 13
TERM AND TERMINATION

13.1. Term. The Term of this Agreement shall commence on the Amendment Effective Date, and shall continue in full force and effect on a country-by-country and Product-by-Product basis until expiration of both Parties' royalty payment obligations in such country with respect to such Products, in each case unless earlier terminated as provided in this Article 13 (the "Term").

13.2. Termination for Breach. Either Party to this Agreement may terminate this Agreement, with respect to the applicable compounds and products only, in the event the other Party hereto shall have materially breached or defaulted in the performance of any of its material obligations hereunder with respect to (i) any Licensed Product(s), Licensed Compound(s) or Reverted Licensed Product(s) or (ii) any PDK Product(s) or PDK Compound(s), and such default shall have continued for [*] after written notice thereof was provided to the breaching Party by the non-breaching Party. Such termination shall be specifically limited to the compounds and products to which the breach or default relates, and this Agreement shall continue in full force and effect with respect to any other Licensed Product, Licensed Compound, Reverted Licensed Product, PDK Product or PDK Compound. Any termination shall become effective at the end of

such [*] period unless the breaching Party has cured any such breach or default prior to the expiration of the [*] period. Notwithstanding the foregoing, failure by either Party to use Commercially Reasonable and Diligent Efforts with respect to the development and commercialization of a Product shall not be deemed a breach of this Agreement. Sunesis hereby waives any breaches or defaults by Biogen Idec under the Original Agreement and acknowledges and agrees that any future breaches or defaults by Biogen Idec under the New Sunesis-Biogen Agreement shall have no bearing on this Agreement.

13.3. Termination For Bankruptcy. Either Party hereto shall have the right to terminate this Agreement forthwith by written notice to the other Party (i) if the other Party is declared insolvent or bankrupt by a court of competent jurisdiction, (ii) if a voluntary or involuntary petition in bankruptcy is filed in any court of competent jurisdiction against the other Party and such petition is not dismissed within ninety (90) days after filing, (iii) if the other Party shall make or execute an assignment of substantially all of its assets for the benefit of creditors, or (iv) substantially all of the assets of such other Party are seized or attached and not released within ninety (90) days thereafter. All rights and licenses granted under this Agreement by one Party to the other Party are, and shall otherwise be deemed 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.

13.4. Termination for Convenience. Provided that Millennium is not in breach of this Agreement, Millennium will have the right to terminate this Agreement at any time with respect to any or all of the Licensed Compounds and Licensed Products (including terminated PDK Products), by providing [*] prior written notice. In such event, this Agreement will remain in effect with respect to PDK Compounds, PDK Products, Reverted Licensed Products and any other Licensed Compound or Licensed Product, in each case that has not been terminated. Provided that Sunesis is not in breach of this Agreement, Sunesis will have the right to terminate this Agreement at any time with respect to any or all of the PDK Products and Reverted Licensed Products, by providing [*] prior written notice. In such event, this Agreement will remain in effect with respect to Licensed Compounds and Licensed Products and any other PDK Products or Reverted Licensed Products, in each case that has not been terminated.

13.5. Effect of Breach or Termination.

13.5.1 Accrued Rights and Obligations. Termination of this Agreement for any reason 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.

13.5.2 Termination by Millennium for Breach or Bankruptcy of Sunesis. In the event of termination of this Agreement by Millennium pursuant to Section 13.2 due to Sunesis's breach (only with respect to the PDK Compounds, PDK Products and PDK Target) or by Millennium pursuant to Section 13.3 for Sunesis's bankruptcy, in addition to those provisions surviving under Section 13.8, the following shall apply:

(a) Sections 2.5.1 (Research Records); 2.5.2 (Inspections) (but only with respect to Millennium's rights and Sunesis's obligations); 5.1.3 (License for Reverted Licensed Products) (but only with respect to Reverted Licensed Products in existence as of the effective date of such termination); 6.1 (Research Milestones); 6.2 (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products) (except that any royalties payable by Millennium thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); 6.4 (Royalties on Net Sales of Reverted Licensed Products); 6.5 (Royalty Term); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate); and Exhibit 8.2 (Reverted Licensed Products) (but only with respect to Reverted Licensed Products in existence as of the effective date of such termination) shall survive.

(b) Subject to the rights of Biogen Idec under the Millennium-Biogen Agreement, Millennium shall control prosecution of all Collaboration Patents (including Sunesis Collaboration Patents, Biogen Idec Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents) at its own expense for such Patent Rights that are related to the PDK Target, PDK Compounds and PDK Products, as the case may be, in addition to the prosecution rights that Millennium has pursuant to Section 9.2.2(a). Sunesis shall be given the opportunity to review Millennium's activities and reasonably consult with Millennium with respect to such Sunesis Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents, and Millennium shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Millennium shall keep Sunesis reasonably informed as to the status of such patent matters, including by providing Sunesis with (i) copies of any documents relating to such Sunesis Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents which Millennium receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Sunesis Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, prosecuting, issuing and maintaining such patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis. In conducting the prosecution activities described in this Section 13.5.2(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

(c) Sunesis's rights and obligations under Section 2.2.3 shall survive with respect to Co-Funded Products for which Sunesis has exercised its Co-Funding Option prior to such termination, and Millennium shall pay royalties on any such Co-Funded Products in accordance with Section 6.3.2. Millennium shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis's Co-Funding Option with respect to future Licensed Products shall terminate, as will Article 3, as well as Sunesis's right to participate in the JDC under Section 4.3 and any Licensed Product Teams under Section 2.3.

(d) The effects of an uncured failure to use Required Efforts under Section 16.4 shall apply, and any inconsistent provisions under Section 13.5.2(a) shall be superseded by such provisions of Section 16.4.

13.5.3 Termination by Sunesis for Breach or Bankruptcy of Millennium. In the event of any termination by Sunesis pursuant to Section 13.2 due to Millennium's breach (only with respect to the Licensed Compounds, Licensed Products and Raf Target) or pursuant to Section 13.3 for Millennium's bankruptcy, in addition to those provisions surviving under Section 13.8, the following provisions of this Section 13.5.3 shall apply:

(a) Sections 2.5.1 (Research Records); 2.5.2 (Inspections) (but only with respect to Sunesis's rights and Millennium's obligations); 5.1.3 (License for Reverted Licensed Products); 6.1 (Research Milestones); 6.2 (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products); 6.4 (Royalties on Net Sales of Reverted Licensed Products (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); 6.5 (Royalty Term); Article 8 (Diligence); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate); and Exhibit 8.2 (Reverted Licensed Products) shall survive, in addition to those provisions surviving under Section 13.8.

(b) Subject to the rights of Biogen Idec under the Millennium-Biogen Agreement, Millennium shall control prosecution of all the Biogen Idec Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents at its own expense, only for such Patent Rights that are related to the Raf Target, Licensed Compounds and Licensed Products. Sunesis shall control prosecution of all Sunesis Collaboration Patents at its own expense for such Sunesis Collaboration Patents that are related to the Raf Target, Licensed Compounds and Licensed Products, as the case may be, in addition to the prosecution rights that Sunesis has pursuant to Section 9.2.2(b). Sunesis shall be given the opportunity to review Millennium's activities and reasonably consult with Millennium with respect to such Joint Sunesis-Biogen Collaboration Patents, and Millennium shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Millennium shall keep Sunesis reasonably informed as to the status of such patent matters, including by providing Sunesis with (i) copies of any documents relating to such Joint Sunesis-Biogen Collaboration Patents which Millennium receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Joint Sunesis-Biogen Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, prosecuting, issuing and maintaining such patent applications and patents within the Sunesis Core Technology shall be borne by Sunesis. In conducting the prosecution activities described in this Section 13.5.3(b), each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

(c) Millennium's rights with respect to Co-Funded Products and the Co-Funded Option shall be as follows:

(i) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Millennium has not obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, such Co-Funded Product shall become a Reverted Licensed Product in accordance with Section 8.2 and Exhibit 8.2 and Sunesis shall thereafter pay royalties to Millennium on Net Sales of such Reverted Licensed Product in accordance with Section 6.4.

(ii) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Millennium has obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, Sunesis's rights and obligations under Section 2.2.3 shall survive, and Millennium shall pay royalties on any such Co-Funded Products in accordance with Section 6.3.2. Millennium shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis's Co-Funding Option with respect to future Licensed Products shall terminate, as will Article 3, as well as Sunesis's right to participate in the JDC under Section 4.3 and any Licensed Product Teams under Section 2.3.

(iii) Sunesis's Co-Funding Option under Section 2.2 with respect to future Licensed Products shall continue (i.e., with respect to Licensed Products that are not Co-Funded Products as of the effective date of such termination), provided that Millennium shall no longer be obligated to provide for each Licensed Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice pursuant to Section 2.2.1. Millennium shall, however, provide Sunesis with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 2.2.1, and shall provide reasonable cooperation to Sunesis in evaluating such Co-Funded Product and the post Phase I Development Costs related thereto, including consulting with Sunesis in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

13.6. Termination by Millennium for Convenience. In the event of termination of this Agreement by Millennium pursuant to Section 13.4, in addition to those provisions surviving under Section 13.8, the following shall apply, only with respect to Licensed Compounds and Licensed Products (including terminated PDK Products):

13.6.1 Sections 2.5.1 (Research Records); 2.5.2 (Inspections); Articles 2 (Product Development); 3 (Product Commercialization); 4 (Management); 5.1.3 (License for Reverted Licensed Products); 6.1 (Research Milestones); 6.2 (Development Milestones); 6.3 (Royalties on Annual Net Sales of Licensed Products); 6.4 (Royalties on Net Sales of Reverted Licensed Products) (except that any royalties payable by Sunesis thereunder, commencing upon such termination and continuing thereafter, shall be reduced by [*]); Section 6.5 (Royalty Term); Article 8 (Diligence); Article 9 (Intellectual Property) (other than Sections 9.2.2 and 9.2.3, which shall terminate); and Exhibit 8.2 (Reverted Licensed Products) shall survive, in addition to those provisions surviving under Section 13.8.

13.6.2 Subject to the rights of Biogen Idec under the Millennium-Biogen Agreement, Millennium shall control prosecution of all the Biogen Idec Collaboration Patents and Joint Sunesis-Biogen Collaboration Patents at its own expense, only for such Patent Rights that are related to the Raf Target, Licensed Compounds and Licensed Products. Sunesis shall control prosecution of all Sunesis Collaboration Patents at its own expense, only for such Sunesis Collaboration Patents that are related to the Raf Target, Licensed Compounds and Licensed Products. Sunesis shall be given the opportunity to review Millennium's activities and provide input with respect to such Joint Sunesis-Biogen Collaboration Patents, and Millennium shall in good faith consider including in such patent applications such claims as Sunesis reasonably requests. Millennium shall keep Sunesis reasonably informed as to the status of such patent matters, including by providing Sunesis with (i) copies of any documents relating to such Joint Sunesis-Biogen Collaboration Patents which Millennium receives from any patent office within twenty (20) days of receipt thereof, including notice of all interferences, reissues, reexaminations, oppositions or requests for patent term extensions, and (ii) the opportunity to review and comment on any documents relating to such Joint Sunesis-Biogen Collaboration Patents which will be filed in any patent office as soon practicable but in all cases at least twenty (20) days prior to such filing. All costs associated with filing, prosecuting, issuing and maintaining the Sunesis Core Technology shall be borne by Sunesis. In conducting the prosecution activities described in this Section 13.6.2, each Party shall employ reasonable efforts not to substantially negatively impact the other Party's rights under the surviving provisions of this Agreement.

13.6.3 Millennium's rights with respect to Co-Funded Products and the Co-Funded Option shall be as follows:

(a) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Millennium has not obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, such Co-Funded Product shall become a Reverted Licensed Product in accordance with Section 8.2 and Exhibit 8.2 and Sunesis shall thereafter pay royalties to Millennium on Net Sales of such Reverted Licensed Product in accordance with Section 6.4.

(b) With respect to any Co-Funded Product for which Sunesis has exercised its Co-Funding Option, and for which Millennium has obtained Regulatory Approval in any territory in the Co-Funded Territory for such Co-Funded Product, in each case as of the effective date of such termination, Sunesis's rights and obligations under Section 2.2.3 shall survive, and Millennium shall pay royalties on any such Co-Funded Products in accordance with Section 6.3.2. Millennium shall no longer be obligated to provide the detailed plans required of a Co-Development Plan and Budget to Sunesis, but shall provide Sunesis with annual budgets of post Phase I Development Costs for any such Co-Funded Products. Sunesis's Co-Funding Option with respect to future Licensed Products shall terminate, as will Article 3, as well as Sunesis's right to participate in the JDC under Section 4.3 and any Licensed Product Teams under Section 2.3.

(c) Sunesis's Co-Funding Option under Section 2.2 with respect to future Licensed Products shall continue (i.e., with respect to Licensed Products that are not Co-Funded Products as of the effective date of such termination), provided that Millennium shall no longer be obligated to provide for each Licensed Product the detailed plans and clinical data required of an Initial Development Plan and Phase II Notice pursuant to Section 2.2.1. Millennium shall, however, provide Sunesis with annual budgets of post Phase I Development Costs for such Co-Funded Product in accordance with the timetable for a Phase II Notice set forth in Section 2.2.1, and shall provide reasonable cooperation to Sunesis in evaluating such Co-Funded Product and the post Phase I Development Costs related thereto, including consulting with Sunesis in good faith regarding such annual budgets and the financial, scientific and regulatory assumptions reflected therein.

13.7. Transition of Information and Materials. With respect to a Party's obligation to transition Collaboration Technology, information and material with respect to a particular Licensed Compound, each Party shall cooperate fully (and cause its Affiliates to cooperate fully) with the other Party to facilitate a smooth and prompt transition of Collaboration Technology, information and materials that are necessary or useful for the receiving Party to exercise its licensed rights hereunder with respect to such Licensed Compound.

13.8. Survival Sections. In addition to the provisions set forth in Sections 13.5.2, 13.5.3 and 13.6 above, as applicable, the following provisions shall survive the expiration or termination of this Agreement for any reason: Articles 1 (Definitions), 7 (Payments, Books and Records), 10 (Confidentiality), 11 (Representations and Warranties), 12 (Indemnification), 13 (Term and Termination), 14 (Dispute Resolution) and 15 (Miscellaneous); and Sections 5.1.1, 5.1.2 and 16.4(b) and (c). In the event of termination of this Agreement by Sunesis pursuant to Section 13.4, in addition to those provisions surviving under Section 13.8, the effects of an uncured failure to use Required Efforts under Section 16.4 shall apply.

ARTICLE 14
DISPUTE RESOLUTION

14.1. Escalation to Senior Executives. In the event of a dispute or matter of significant concern arises between the Parties, then at the request of either Party, the matter shall be escalated to a senior executive from each Party. Such senior executive shall be either the CEO or President of such Party, or another senior executive of such Party with the title of Vice President or higher and who has direct management responsibility for the matter in dispute. Upon such request, such senior executives shall make themselves reasonably available to meet, and shall meet either by telephone or if, specifically requested, in person, to attempt to resolve such matter, and shall thereafter continue to use good faith efforts to attempt to resolve such matter unless it becomes clear that the matter cannot be resolved by mutual agreement. Thereafter either Party may pursue such legal process as is otherwise available under applicable law.

14.2. Injunctive Relief. This Article 14 shall not be construed to prohibit either Party from seeking preliminary or permanent injunctive relief, restraining order or degree of specific performance in any court of competent jurisdiction to the extent not prohibited by this Agreement. For avoidance of doubt, any such equitable remedies provided under this Article 14 shall be cumulative and not exclusive and are in addition to any other remedies, which either Party may have under this Agreement or applicable law.

14.3. Matters to Proceed to Court. Notwithstanding the foregoing, any dispute relating to the determination of validity of a Party's patents or other issues relating solely to a Party's intellectual property and any dispute asserting breach of this Agreement or of the representations and warranties made hereunder shall be submitted exclusively to the federal court in Delaware, and the Parties hereby consent to the jurisdiction and venue of such court.

ARTICLE 15
MISCELLANEOUS

15.1. Governing Laws. This Agreement and any dispute arising from the construction, performance or breach hereof shall be governed by and construed, and enforced in accordance with, the laws of the state of Delaware, without reference to conflicts of laws principles.

15.2. Waiver. It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent or similar breach or default.

15.3. Assignment. This Agreement shall not be assignable by either Party without the written consent of the other Party hereto, except either Party may assign this Agreement without such consent to its Affiliates, or to an entity that acquires all or substantially all of the business or assets of such Party whether by merger, reorganization, acquisition, sale, or otherwise; provided, however, that the assignee shall agree in writing to be bound by the terms and conditions of this Agreement, and that in the case of such an acquisition of all or substantially all of the business or assets of a Party, such assignment shall [*]. Notwithstanding any other provision in this Agreement, [*] involving Sunesis shall not be deemed to be a breach of this Agreement or otherwise require [*], provided that such [*] shall not [*] to the Sunesis Licensed Patents and Sunesis Core Technology with respect to: the [*]; Biogen Idec Collaboration Patents; Joint Sunesis-Biogen Collaboration Patents; Development Technology; Other Millennium Technology; and Confidential Information of Millennium.

15.4. Independent Contractors. The relationship of the Parties hereto is that of independent contractors. The Parties hereto are not deemed to be agents, partners or joint venturers of the others for any purpose as a result of this Agreement or the transactions contemplated thereby.

15.5. Compliance with Laws. In exercising their rights under this license, the Parties shall fully 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 license including those applicable to the development, manufacture, distribution, import and export and sale of Products pursuant to this Agreement.

15.6. Patent Marking. Millennium agrees to mark and use reasonable efforts to make all its Sublicensees mark all Licensed Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of

manufacture and sale thereof. Sunesis agrees to mark and use reasonable efforts to make its Sublicensees mark all Reverted Licensed Products and PDK Products sold pursuant to this Agreement in accordance with the applicable statute or regulations relating to patent marking in the country or countries of manufacture and sale thereof.

15.7. Notices. All notices, requests and other communications hereunder shall be in writing and shall be personally delivered or by registered or certified mail, return receipt requested, postage prepaid, in each case to the respective address specified below, or such other address as may be specified in writing to the other Parties hereto and shall be deemed to have been given upon receipt:

Sunesis:	Sunesis Pharmaceuticals, Inc. 395 Oyster Point Boulevard, Suite 400 South San Francisco, California 94080 Attn: Chief Executive Officer
With a copy to:	Cooley LLP 3175 Hanover St. Palo Alto, California 94304-1050 Attn: Glen Sato
Millennium	Millennium Pharmaceuticals, Inc. 40 Landsdowne Street Cambridge, Massachusetts 02139 Attn: General Counsel
With a copy to:	Millennium Pharmaceuticals, Inc. 40 Landsdowne Street Cambridge, Massachusetts 02139 Attn: Head Oncology Therapeutic Area Unit

15.8. Severability. In the event that any provision of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect to the fullest extent permitted by law without said provision, and the Parties shall amend the Agreement to the extent feasible to lawfully include the substance of the excluded term to as fully as possible realize the intent of the Parties and their commercial bargain. If a Party seeks to avoid a provision of this Agreement by asserting that such provision is invalid, illegal or otherwise unenforceable, the other Party shall have the right to terminate this Agreement upon sixty (60) days' prior written notice to the asserting Party, unless such assertion is eliminated and cured within such sixty (60) day period. If Millennium has sought to so avoid a provision of this Agreement, such termination shall be deemed a termination by Millennium under Section 13.4 above, and if Sunesis has sought such an avoidance, such termination shall be deemed a termination by Millennium for breach by Sunesis under Section 13.2 above.

15.9. Advice of Counsel. Sunesis and Millennium have each consulted counsel of their choice regarding this Agreement, and each acknowledges and agrees that this Agreement shall not be deemed to have been drafted by one Party or another and will be construed accordingly.

15.10. Performance by Affiliates; Warranty. Millennium may exercise any right or discharge any obligation hereunder through any of its Affiliates. Each Party hereby warrants and guarantees the performance of any and all rights and obligations of this Agreement by its Affiliates and Sublicensees.

15.11. Complete Agreement. This Agreement with its Exhibits, together with the Three Party Agreement, constitutes the entire agreement, both written and oral, between the Parties with respect to the subject matter hereof, and all prior agreements respecting the subject matter hereof, either written or oral, express or implied, shall be abrogated, canceled, and are null and void and of no effect. No amendment or change hereof or addition hereto shall be effective or binding on either of the Parties hereto unless reduced to writing and executed by the respective duly authorized representatives of Sunesis and Millennium.

15.12. Headings. The captions to the several Sections and Articles hereof are not a part of this Agreement, but are included merely for convenience of reference and shall not affect its meaning or interpretation.

15.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement.

ARTICLE 16

DEVELOPMENT AND COMMERCIALIZATION OF PDK COMPOUNDS AND PDK PRODUCTS

16.1 License to Sunesis. Subject to the terms and conditions of this Agreement, Millennium hereby grants to Sunesis a worldwide, exclusive (even as to Millennium) license under the Millennium Licensed Technology, with the right to grant and authorize sublicenses as provided in Section 5.2 of the Agreement and, subject to Section 16.5, to research, develop, perform regulatory activities for, make, have made, use, import, offer for sale, sell and otherwise exploit PDK Compounds and PDK Products in the Field.

16.2 Transition. During the [*] following the Amendment Effective Date, Millennium shall cooperate fully with Sunesis and shall, promptly after the Amendment Effective Date, provide Sunesis with copies of all data, documentation and information provided by Biogen Idec to Millennium relating to the PDK Compounds (to the extent not previously provided), and Sunesis shall have the right to use and disclose such items.

16.3 Reporting. Sunesis shall provide Millennium with a Diligence Summary (describing activities conducted in the previous [*] with respect to [*], notwithstanding language to the contrary regarding frequency in Section 1.15. [*], Sunesis shall include in the Diligence Summary [*] of such PDK Product. The Parties acknowledge and agree that due to launch timing, this may require an additional Diligence Summary for such year.

16.4 Diligence. (a) Sunesis shall use Required Efforts to research, develop, perform regulatory activities and commercialize a PDK Product within the Field based upon the Millennium Licensed Technology. "Required Efforts" shall mean [*] for a compound or product of similar market potential and at a similar stage in its development or product life, taking into account, without limitation, with respect to a product issues of safety and efficacy, product profile, the proprietary position of the product, the then current competitive environment for the product and the likely timing of the product's entry into the market, the regulatory environment of the product, and other relevant scientific, technical and commercial factors. Sunesis agrees to keep Millennium fully informed regarding the development, regulatory and commercialization activities with respect to the PDK Product by providing reports to Millennium at least annually regarding ongoing activities being undertaken with respect to PDK Products. This Section 16.4 shall not limit other provisions of this Agreement that address the provision of information regarding PDK Products or PDK Compounds. If Sunesis materially fails to use Required Efforts to develop and commercialize a PDK Product, and Sunesis shall continue to materially fail to use Required Efforts to develop and commercialize a PDK Product for [*] after written notice thereof from Millennium, then Millennium shall have the right to terminate the license granted to Sunesis under Section 16.1 and to assume the development and commercialization of such PDK Product using Required Efforts, upon written notice to Sunesis.

(b) Upon such termination or for termination by Sunesis in accordance with Section 13.4: (i) all PDK Products shall no longer be deemed PDK Products but shall instead be deemed Licensed Products and shall be subject to Millennium's licenses under Section 5.1 of the Agreement, except that terminated PDK Products shall not become [*], (ii) all references in the Agreement to PDK Compounds and PDK Products shall be deemed references to Licensed Compounds and Licensed Products, respectively, except that terminated PDK Products shall not become [*], (ii) all rights and obligations under the Agreement with respect to Licensed Compounds and Licensed Products shall apply to the terminated PDK Compounds and PDK Products, except that terminated PDK Products shall not become [*], milestones payable by Millennium to Sunesis for such Licensed Products (that were previously PDK Products) shall be as set forth in Section 17.2 below (and not in Sections 6.1 and 6.2 of the Agreement) and royalties payable by Millennium to Sunesis on Net Sales of such Licensed Products (that were previously PDK Products) shall be as set forth in Section 17.3 below (and not in Section 6.3 of the Agreement), provided that such royalties shall be payable by Millennium to Sunesis at rates that are [*] of the rates set forth in Section 17.3 below, (iv) the terms of Section 2 of Exhibit 8.2 of the Agreement shall apply (as applied to PDK Products in place of Reverted Licensed Products), (v) Millennium shall have the right to control prosecution of the Patent Rights described in Section 9.2.2(b) of the Agreement in accordance with Section 9.2.2(a) of the Agreement (with costs borne by Millennium) except that Millennium shall have no reporting or consulting obligations to Sunesis, and (vi) Millennium shall have the right to enforce and defend the Patent Rights described in Section 9.3.5 above in accordance with Section 9.3.2 of the Agreement.

(c) In the event that there is a good faith dispute as to whether the activities of Sunesis constitute Required Efforts under this Section 16.4, such dispute shall be referred to the Parties' respective Chief Medical Officers (or a Vice President with responsibility for clinical research of such Party as the equivalent if there is no such Chief Medical Officer of a Party) for

resolution in accordance with Section 8.5 of the Agreement (as applied to a PDK Product in place of a Co-Funded Product or Reverted Licensed Product). The Parties by mutual agreement have not formed the Joint Steering Committee as of the Amendment Effective Date.

16.5 [*]. (a) Sunesis shall not [*], except as permitted by this Section 16.5. Sunesis hereby grants Millennium [*] as detailed in this Section 16.5. Prior to [*], other than in connection with [*], Sunesis shall notify Millennium in writing. Such written notice shall include without limitation [*]. Millennium shall have [*] from such notice to notify Sunesis that it [*]. Millennium shall have a period of [*] following the date of such notice from Millennium to [*], including without limitation [*].

(b) If the Parties do not [*], or if Millennium notifies Sunesis in writing [*] regarding such [*], then Sunesis shall have no further obligations with respect to such [*] under this Section 16.5 during the [*]; provided that during the [*], if Millennium notified Sunesis of its [*], Sunesis shall not [*]. In the event that (i) the [*], or (ii) Sunesis does not [*], then Sunesis shall be obligated again to notify Millennium in writing pursuant to this Section 16.5 [*] in the case of (ii) of this subsection), and this Section 16.5 shall again apply to each [*]. Sunesis shall provide Millennium's legal counsel with a copy of [*] solely to enable Millennium to confirm compliance with the terms of this Section 16.5, which written [*] shall constitute Confidential Information of Sunesis. For clarity, this Section 16.5 shall not apply to a [*] with a distributor for PDK Product(s).

ARTICLE 17

PAYMENTS FOR PDK COMPOUNDS AND PDK PRODUCTS

17.1 Upfront Payment. Sunesis shall pay Millennium [*] within [*] of the Amendment Effective Date.

17.2 Milestones. Sunesis shall notify Millennium within ten (10) business days after the first achievement by a PDK Product of each of the following milestone events, and shall pay to Millennium the following amounts within thirty (30) days following the first achievement of each such event by Sunesis or its Affiliates or Sublicensees:

Milestone	Payment Amount
[Start of GLP clinical toxicology testing of a PDK Product	$ 100,000
Filing of the first Investigational New Drug Application for a PDK Product with the FDA	$ 100,000
First Regulatory Approval of a PDK Product in the U.S.	$ 5,000,000
First Regulatory Approval of a PDK Product by the EMA	$ 4,000,000]

Milestone payments will be due only if achieved by a PDK Product that is [*]. Each milestone payment will be payable one time only, regardless of the number of PDK Products to achieve the milestone event or the number of times the event is achieved by a PDK Product. Each milestone payment shall be non-refundable and non-creditable against other amounts due Millennium under the Agreement. If a milestone for a PDK Product under Section 17.2 is achieved with respect to such PDK Product before a prior milestone for such PDK Product, then the earlier milestone payments shall then also be due with respect to such PDK Product.

17.3 Royalties**.**

(a) Generally. Subject to Sections 17.3(b) and (c), Sunesis shall pay to Millennium a royalty on Net Sales by Sunesis, its Affiliates and Sublicensees of PDK Products on a PDK Product-by-PDK Product basis, equal to the percentage of such Net Sales set forth below:

Annual Net Sales	Royalty on Net Sales
Portion of Annual Net Sales of such PDK Product less than $[*]	[*]%
Portion of Annual Net Sales of such PDK Product greater than or equal to $[*] and less than $[*]	[*]%
Portion of Annual Net Sales of such PDK Product greater than or equal to $[*] and less than or equal to $[*]	[*]%
Portion of Annual Net Sales of such PDK Product greater than $[*]	[*]%

For purposes of the foregoing, “Annual Net Sales” shall mean, for a particular PDK Product, the aggregate of the Net Sales, in a particular calendar year, of such PDK Product in each country in which such PDK Product is covered by a Valid Claim of a Millennium Licensed Patent.

(b) Third Party Patents. If: (i) a [*] of a Third Party should be in force in any country covering the practice of the Millennium Licensed Technology with respect to the manufacture, use or sale of any PDK Product, (ii) it should prove in Sunesis’s reasonable judgment, after consultation with Millennium, [*] for Sunesis to commercialize such PDK Product without obtaining a royalty bearing license from such Third Party [*] (with such agreement not to be unreasonably withheld or delayed), and (iii) the royalty paid to such Third Party is directed to the practice of rights granted to Sunesis under Section 16.1 with respect to such PDK Product, then Sunesis shall be entitled to a credit against the royalty payments due under Section 17.3(a) with respect to the same PDK Product in such country of an amount equal to [*] of the royalty paid to such Third Party for such PDK Product in such country, arising from the practice of such Millennium Licensed Technology with respect to the manufacture, use or sale of the PDK Product in said country, with such credit not to exceed [*] of the royalty otherwise due under this Agreement for such PDK Product in such country.

(c) Royalty Term. The royalties due pursuant to Section 17.3(a) shall be payable on a country-by-country and PDK Product-by-PDK Product basis commencing on the first commercial sale in a country and continuing until the expiration of the last Valid Claim of the Millennium Licensed Patents Covering the sale or use of the relevant PDK Product in such country.

17.4 Payment Terms. The payment terms of Article 7 of the Agreement will apply to payments made by Sunesis under this Article 17.

*** * * * ***

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their authorized representatives and delivered in duplicate originals as of the Amendment Effective Date.

MILLENNIUM PHARMACEUTICALS, INC.		SUNESIS PHARMACEUTICALS, INC.	
By:	/s/ Anna Protopapas	By:	/s/ Daniel N. Swisher, Jr.
Name:	Anna Protopapas	Name:	Daniel N. Swisher, Jr.
Title:	President	Title:	CEO and President

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EXHIBIT 1.4(a)

RAF Portfolio

Country	Case Type	Status	Title	Filing Date	Application Number	Publication Number	Publication Date	Patent Number	Grant Date
[*]	[*]	[*]	[*]	[*]	[*]				
[*]	[*]	[*]	[*]	[*]	[*]	[*]	[*]		
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Country	Case Type	Status	Title	Filing Date	Application Number	Publication Number	Publication Date	Patent Number	Grant Date
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PDK Portfolio

Country	Case Type	Status	Title	Filing Date	Application Number	Publication Number	Publication Date	Patent Number	Grant Date
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Country	Case Type	Status	Title	Filing Date	Application Number	Publication Number	Publication Date	Patent Number	Grant Date
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EXHIBIT 1.41

Sunesis Core Technology

Sunesis No.	Serial No.	Title	Status
SU-100	**US 09/105,372**	**Methods for Rapidly Identifying Small Organic Molecule Ligands for Binding to Biological Target Molecules**	**Issued as U.S. Patent No. 6,335,155**
SU-100 D1C1	**US 10/043,833**	**Methods for Rapidly Identifying Small Organic Molecule Ligands for Binding to Biological Target Molecules**	**allowed**
[*]	[*]	[*]	[*]
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Sunesis No.	Serial No.	Title	Status
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Sunesis No.	Serial No.	Title	Status
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EXHIBIT 1.44

[*] Target Selectivity

[*]

Name	Units/Amount	Source	Catalog Number	Storage
[*]	[*]	[*]	[*]	[*]oC
[*]	[*]	[*]	[*]	[*]oC
[*]	[*]	[*]	[*]	[*]oC
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[*]	[*]	[*]	[*]	[*]oC
[*]	[*]	[*]	[*]	[*]oC
[*]	[*]	[*]	[*]	[*]oC

[*]

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

[*] **Cellular Assay for [*]**

[*]

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

[*] **Cellular Assay [*]**

[*]

	1	2	3 [*]	4 [*]	5 [*]	6 [*]	7 [*]	8 [*]	9 [*]	10 [*]	11	12
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[*] **Enzyme Assay [*]**

[*]

	1	2	3	4	5	6	7	8	9	10	11	12
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[*].

EXHIBIT 8.2

Reverted Licensed Product

Section 1. Reverted Licensed Product.

1.1 Millennium shall cooperate fully with Sunesis and shall provide Sunesis with all data, documentation, information and materials generated or used by Millennium in the development, production or other exploitation of such Reverted Licensed Product, and Sunesis shall have the right to use and disclose such items.

1.2 To the extent not already terminated, the licenses granted to Millennium under Section 5.1 shall terminate with respect to such Reverted Licensed Product.

1.3 All right, title and interest in and to (i) all regulatory filings related to the Reverted Licensed Product, including all INDs, NDAs and all information and correspondence related thereto, and (ii) any trademarks specific to the Reverted Licensed Product shall be transferred and assigned to Sunesis.

1.4 Millennium shall cooperate fully with Sunesis upon Sunesis's request to assign to Sunesis, or otherwise secure for Sunesis the benefits of, any arrangement between Millennium and a Third Party related to the development, production or exploitation of such Reverted Licensed Product, including clinical research agreements, manufacturing and supply agreements and distribution agreements. In the event that such Reverted Licensed Product was manufactured by Millennium, then Millennium shall continue to provide Sunesis at fully loaded cost plus a 15% cost of capital charge with quantities of Reverted Licensed Products reasonably ordered by Sunesis within twelve (12) months after the date of transition.

1.5 Without limiting the foregoing, Millennium shall use reasonable efforts to implement the provisions of this Exhibit 8.2 and to ensure orderly transition and uninterrupted development of the Reverted Licensed Product. Sunesis shall promptly reimburse Millennium's reasonable out-of-pocket costs with respect to activities, services and materials provided by Millennium under Section 1 of this Exhibit 8.2.

Section 2. Termination of a Reverted Licensed Product and Reversion to Millennium.

2.1 Sunesis shall cooperate fully with Millennium and shall provide Millennium with all data, documentation, information and materials generated or used by Sunesis in the development, production or other exploitation of such Reverted Licensed Product, and Millennium shall have the right to use and disclose such items.

2.2 All right, title and interest in and to (i) all regulatory filings related to such Reverted Licensed Product, including all INDs, NDAs and all information and correspondence related thereto, and (ii) any trademarks specific to the Reverted Licensed Product shall be transferred and assigned to Millennium.

[*] = Certain confidential information contained in this document, marked by brackets, is filed with the Securities and Exchange Commission pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended.

2.3 Sunesis shall cooperate fully with Millennium upon Millennium's request to assign to Millennium, or otherwise secure for Millennium the benefits of, any arrangement between Sunesis and a Third Party related to the development, production or exploitation of such Reverted Licensed Product, including clinical research agreements, manufacturing and supply agreements and distribution agreements. In the event that such Reverted Licensed Product was manufactured by Sunesis, then Sunesis shall continue to provide Millennium at fully loaded cost plus a 15% cost of capital charge with quantities of such Reverted Licensed Product reasonably ordered by Millennium within twelve (12) months after the date of transition.

2.4 Without limiting the foregoing, Sunesis shall use reasonable efforts to implement the provisions of this Exhibit 8.2 and to ensure orderly transition and uninterrupted development of such Reverted Licensed Product. Millennium shall promptly reimburse Sunesis's reasonable out-of-pocket costs with respect to activities, services and materials provided by Sunesis under Section 2 of this Exhibit 8.2.

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Exhibit 10.48

OYSTER POINT MARINA PLAZA

Office Lease

of

SUITE 400

to

SUNESIS PHARMACEUTICALS, INC.,

a Delaware corporation

395 Oyster Point Boulevard

South San Francisco, CA 94080

Office Lease

THIS OFFICE LEASE (the "Lease") is entered into as of January 14, 2014, by and between **KASHIWA FUDOSAN AMERICA, INC.**, a California corporation ("Landlord") and **SUNESIS PHARMACEUTICALS, INC.**, a Delaware corporation ("Tenant").

1 BASIC LEASE TERMS

1.1 LEASE OF PREMISES. Landlord leases to Tenant, and Tenant rents and hires from Landlord, the premises described in § 1.3 below, in the building known by the street address 395 Oyster Point Boulevard (the "Building") in the City of South San Francisco, County of San Mateo, State of California, on the property described in § 1.6 below, in the business park commonly known as Oyster Point Marina Plaza (the "Complex"), for the term stated in § 1.4 below, for the rents hereinafter reserved, and upon and subject to the terms, conditions (including limitations, restrictions, and reservations), and covenants hereinafter provided. The Building and the Complex are more particularly described and depicted in **Exhibit A** which is attached hereto. Each party hereby expressly covenants and agrees to observe and perform all of the conditions and covenants herein contained on its part to be observed and performed.

1.1.1 Lease Contingency. This Lease is expressly contingent upon the ability of Tenant to obtain an extension of its sublease with McKesson for the month of February, 2014. If Tenant fails after good-faith efforts to obtain such an extension of its sublease with McKesson, this Lease shall be void and shall be deemed to have terminated as of the date on which Tenant gives Landlord written notice that it has not been able to obtain such an extension of its sublease with McKesson. Tenant's ability to obtain such an extension of its sublease with McKesson is an express condition precedent to the commencement of this Lease on the Commencement Date.

1.2 SUMMARY TABLE. The parties agree that the following table (the "Table") sets forth in summary form the basic terms of this Lease, including the specific space comprising the Premises and, with respect to such space, the Term of the Lease, the usable and rentable square footage, the Base Rent, Base Year, and Tenant's Share, as all of such terms are defined below:

PERIOD	SUITE NO.	RSF	USF	MONTHLY BASE RENT	T'S SHARE BLDG	T'S SHARE COMPLEX	BASE YEAR
March 1, 2014 through February 28, 2015	400	15,378	13,372	$28,449.30	6.608%	3.311%	2014
March 1, 2015 through April 30, 2015	400	15,378	13,372	$28,449.30	6.608%	3.311%	2014

In the event of any conflict between the terms contained in the Table and the terms contained in subsequent sections of the Lease, the terms of the Table shall control, except that any dates stated in the Table are subject to adjustment as appropriate to the extent any other provisions of the Lease provide for adjustments to the Commencement Date and/or the Expiration Date.

1.3 PREMISES. The premises leased to Tenant (the "Premises") are a portion of the fourth (4th) floor of the Building and are commonly known as **Suite 400**, as shown on the floor plan annexed hereto as **Exhibit B** (the "Space Plan"). The Premises also include all fixtures and equipment which are attached thereto, except items not deemed to be included therein and which are removable by Tenant as provided in Article 10 below. Landlord and Tenant agree that the usable and rentable area of the Premises, and the

respective rentable areas of the Property (as defined in § 1.6 below) and Complex, for all purposes under this Lease, are as follows and as specified in the Table:

Property's Rentable Area:	**232,733 rsf**
Complex's Rentable Area:	**464,502 rsf.**

Tenant acknowledges that it has caused its architect to verify the numbers stated in the Table and herein relating to the measurements of such spaces prior to the Commencement Date of this Lease or has had an opportunity to do so.

1.4 TERM; COMMENCEMENT DATE. The term (the "Term") for which the Premises are hereby leased shall commence on the "Commencement Date," which shall be March 1, 2014, and shall end at noon on the "Expiration Date," which shall be April 30, 2015, or any earlier date upon which the Term may expire or be cancelled or terminated pursuant to any of the conditions or covenants of this Lease or pursuant to law. Promptly following the Commencement Date the parties hereto shall, if required by Landlord, enter into a supplementary agreement fixing the dates of the Commencement Date and the Expiration Date in the form which is attached hereto as **Exhibit E** and incorporated herein by reference.

1.4.1 Option to Renew. Tenant is hereby granted one (1)option to extend (the "Extension Option") the Term of the Lease for one (1) additional period of six (6)months (the "Extension Period"). The Extension Period term shall begin the first day following the Expiration Date and shall take effect on the same terms and conditions in effect under the Lease immediately prior to the Extension Period, except that (i) Tenant shall have no further right to extend and (ii) monthly Base Rent shall be Thirty Thousand Seven Hundred Fifty-Six Dollars per month.

(a) Exercise of Option. The Extension Option may be exercised only by (i) delivering in person to Landlord's Building Manager in the Building Office written notice of Tenant's irrevocable election to exercise no earlier than ten (10) months and no later than six (6) months prior to the commencement of the Extension Period, and (ii) collecting and retaining in exchange for such notice of exercise an original written receipt therefor signed and dated by Landlord's Building Manager. Tenant's exercise of its Extension Option shall not be effective or valid if there is any deviation in the timing or manner of exercise prescribed herein.

(b) Failure to Exercise. If Tenant shall fail validly and timely to exercise the Option herein granted, said Option shall terminate and shall be null and void and of no further force and effect.

(c) Default. Tenant's exercise of the Option shall, at Landlord's election, be null and void if Tenant is in Default on the date of Tenant's notice of exercise or at any time thereafter and prior to commencement of the Extension Period. Tenant's exercise of the Extension Option shall not operate to cure any Default by Tenant nor to extinguish or impair any rights or remedies of Landlord arising by virtue of such Default. If the Lease or Tenant's right to possession of the Premises shall terminate before Tenant shall have exercised the Extension Option, then immediately upon such termination the Extension Option shall simultaneously terminate and become null and void.

(d) Time. Time is of the essence of the Extension Option granted hereunder.

1.5 RENT. The "Rent" reserved under this Lease, for the Term thereof, shall consist of the following:

(a) "Base Rent" as set forth in the Table for the various spaces and periods described therein per month, which shall be payable in advance on the first day of each and every calendar month during the Term of this Lease, except that Tenant shall pay the first month's Base Rent due under the Lease upon the execution and delivery of this Lease by Tenant; and

(b) "Additional Rent" consisting of any and all other sums of money as shall become payable by Tenant to Landlord hereunder; and Landlord shall have the same remedies for default in the payment of Additional Rent as for a default in payment of Base Rent).

1.5.1 Payment of Rent. Tenant shall pay the Base Rent and Additional Rent promptly when due, without demand therefor and without any abatement, deduction, or setoff whatsoever, except as may be expressly provided in this Lease. Tenant shall pay the Rent to Landlord, in lawful money of the United States of America, at Landlord's office at the Complex or at such other place, or to such agent and at such place, as Landlord may designate by notice to Tenant. If the Commencement Date occurs on a day other than the first day of a calendar month, the Base Rent for such calendar month shall be prorated based on a 30-day month, and the balance of the first month's Base Rent theretofore paid shall be credited against the next monthly installment of Base Rent.

1.5.2 Interest and Late Charges. If Tenant fails to pay any Rent when due, the unpaid amounts shall bear interest from the due date until paid at a rate per annum equal to the Prime Rate plus five percent (5%) or, if less, at the highest rate of interest permitted by applicable law. As used herein, "Prime Rate" means the prime rate published in the Money Rates section of the *Wall Street Journal* (Western edition) as the same may change from time to time or in a similar publication if the *Wall Street Journal* ceases publication or ceases publication of its Money Rates section during the Term. Tenant acknowledges that the late payment of any monthly Rent will cause Landlord to lose the use of that money and incur costs and expenses not contemplated under this Lease, including administrative and collection costs and processing and account expenses, the exact amount of which it is difficult to ascertain. Therefore, in addition to interest, if any such installment is not received by Landlord within five (5) days from the date it is due, Tenant shall pay Landlord a late charge equal to ten percent (10%) of such installment. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from such nonpayment by Tenant. In addition, any check returned by the bank for any reason will be considered late and will be subject to all late charges plus an additional returned check fee of Twenty Dollars ($20.00). After two such occasions upon which checks have been returned in any twelve-month period, Landlord will have the right to require payment by a cashier's check or money order. Acceptance of any interest or late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease or at law or in equity, unless the payment of such interest and late charges is accompanied by all rentals then due and owning (notwithstanding anything to the contrary in § 20.2.1 below).

1.6 PROPERTY. For the purposes of this Lease, the "Property" shall mean the Building and any common or public areas or facilities, easements, corridors, lobbies, sidewalks, loading areas, driveways, landscaped areas, skywalk, parking garages and lots, and any and all other structures or facilities operated or maintained in connection with or for the benefit of the Building, and all parcels or tracts of land on which all or any portion of the Building or any of the other foregoing items are located, and any fixtures, machinery, equipment, apparatus, Systems and Equipment (as defined in § 1.6.5 below), furniture and other personal property located thereon or therein and used in connection therewith, whether title is held by Landlord or its affiliates. The Property shall also be deemed to include such other of the Complex's buildings or structures (and related facilities and parcels on which the same are located) as Landlord shall have incorporated by reference to the total square footage of the Building stated in § 1.3 above.

1.6.1 Common Areas. Tenant and its agents, employees, and invitees shall have the non-exclusive right with others designated by Landlord to the free use of the common areas in the Property and the Complex for the common areas' intended and normal purpose. The term *common areas* shall mean elevators, sidewalks, parking areas, driveways, hallways, stairways, public restrooms, common entrances, lobbies, and other similar public areas and access ways.

1.6.2 Athletic Facility. Notwithstanding the foregoing, the common areas do not include the Building's athletic facility (the "Athletic Facility"), which is an unsupervised and unattended weight and exercise room and shower facility. Tenant acknowledges that Landlord presently makes available (but is not obligated under this Lease to make available) the Athletic Facility for the general use of all tenants and their officers and employees, subject to such rules and regulations as Landlord may impose from time to time in its sole and absolute discretion regarding the use thereof. Tenant shall cause each of its officers and employees using the Athletic Facility to sign and deliver to Landlord an "Athletic Facility Use Agreement" in the form attached hereto as **Exhibit D**, as such form may be revised by Landlord from time to time in its sole and absolute discretion. Tenant understands and agrees that no individual shall be permitted use of or access to the Athletic Facility unless and until such individual shall have first signed and delivered the Athletic Facility Use Agreement to Landlord. Landlord shall have the right to limit the use of the Athletic Facility in any manner it may deem necessary, or to discontinue the Athletic Facility altogether, at any time, in its sole and absolute discretion, and neither Tenant nor its officers or employees shall be entitled to any compensation, credit, allowance, or offset of expenses or Rent as a result of any such limitation or discontinuance.

1.6.3 Reservation to Landlord. Notwithstanding anything to the contrary herein, possession of areas necessary for utilities, services, safety, and operation of the Property, including the Systems and Equipment, telephone closets (whether located in the common areas or in the Premises), fire exits and stairways, perimeter walls, space between the finished ceiling of the Premises and the slab of the floor or roof of the Property thereabove, and the use thereof, together with the right to install, maintain, operate, repair, and replace any part of the Systems and Equipment in, through, under, or above the Premises in locations that will not materially interfere with Tenant's use of the Premises, are hereby excepted from both the Premises and the common areas and are reserved by Landlord and not demised to Tenant. Tenant's access to the telephone closets on each floor and the Building's main telephone room shall be subject to the Rules (as defined in § 13.1 below) and shall be permitted only with Landlord's written consent and under the supervision of Landlord's Building Engineer on each occasion that such access is sought.

1.6.4 Changes and Alterations of the Property. Landlord reserves the right to make repairs, alterations, additions, or improvements, structural or otherwise, in or to the Property or Complex as deemed necessary or desirable in Landlord's sole and absolute discretion, so long as such repairs or alterations do not materially and unreasonably interfere with Tenant's access to or beneficial use of the Premises for their intended purposes. Landlord reserves the right hereunder to do the following: (i) install, use, maintain, repair, and replace pipes, ducts, conduits, wires, and appurtenant meters and equipment for service to the various parts of the Property above the ceiling surfaces, below the floor surfaces, within the walls, and in the central core areas; (ii) to relocate any pipes, ducts, conduits, wires, and appurtenant meters and equipment which are located in the Premises or located elsewhere outside the Premises; (iii) expand the Building or the Complex; (iv) make changes to the Property or the Complex, including changes, expansions, and reductions in the location, size, shape, and number of driveways, entrances, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways, parking spaces, and parking areas; (v) close any of the common areas, so long as reasonable access to the Premises remains available; (vi) use the common areas while engaged in making additional improvements, repairs, or alterations to the Property, Complex, or any portion thereof; and (vii) do and perform such other acts and make such other changes in, to, or with respect to the Property, Complex, common areas, and Building as Landlord may deem appropriate. The exercise of any of the foregoing rights shall not subject Landlord to claims for constructive eviction, abatement of Rent, damages, or other claims of any kind, except as otherwise expressly provided in this Lease. If Landlord enters the Premises to exercise any of the foregoing rights, Landlord shall provide reasonable advance written or oral notice to Tenant's on-site manager.

1.6.5 Systems and Equipment. As used in this Lease, "Systems and Equipment" means collectively any existing plant, machinery, transformers, duct work, intrabuilding network cables and wires that transmit voice, data, and other telecommunications signals ("INC"), and other equipment, facilities, and systems designed to supply water, heat, ventilation, air conditioning and humidity or any other services or utilities, or comprising or serving as any component or portion of the electrical, gas, steam, plumbing, sprinkler, communications, alarm, security, or fire/life/safety systems or equipment, or any other mechanical, electrical, electronic, computer or other systems or equipment for the Property.

2 USE

2.1 USE AND ENJOYMENT OF PREMISES. Tenant shall use and occupy the Premises for executive and general offices and for no other purpose. Notwithstanding anything contained herein to the contrary, Tenant may use portions of the Premises not to exceed one hundred fifty (150) usable square feet for the preparation and reheating of food and beverages, including the use of refrigerators, ice makers, coffee machines, hot plates, microwave ovens, or similar heating devices (but not for the actual cooking of food) for service only to Tenant's employees and business invitees.

2.1.1 Suitability. Tenant acknowledges that neither Landlord nor any agent of Landlord has made any representation or warranty with respect to the Premises, the Property, or the Complex, or with respect to the suitability of same for the conduct of Tenant's business, except as expressly provided in this Lease. Tenant's acceptance of possession of the Premises shall conclusively establish that the foregoing were at such time in satisfactory condition. Landlord makes no representation to Tenant regarding the installation, ownership, location, or suitability for Tenant's purposes of the INC in the Building.

2.1.2 Insurance Rates. Tenant shall not do or suffer anything to be done in or about the Premises, nor shall Tenant bring or allow anything to be brought into the Premises, which will in any way increase the rate of any fire insurance or other insurance upon the Property or its contents, cause a cancellation of said insurance, or otherwise affect said insurance in any manner.

2.1.3 Use to Comply with Laws. Tenant shall use the Premises in conformity with all applicable Laws, as specified in Article 6 below.

2.1.4 Floor Loading. Tenant shall not place or permit to be placed on any floor a load exceeding eighty (80) pounds per square foot or such lower floor load as such floor was designed to carry.

2.2 NUISANCE AND WASTE. Tenant also shall not do or suffer anything to be done in or about the Premises which will in any way obstruct or interfere with the rights of other tenants or occupants of the Property or injure or annoy said tenants or occupants, nor shall Tenant use or suffer the Premises to be used for any unlawful purposes. In no event shall Tenant cause or permit any nuisance in or about the Premises, and no loudspeakers or similar devices shall be used without the prior written approval of Landlord, which approval may be withheld in Landlord's sole and absolute discretion. Tenant shall not commit or suffer to be committed any waste in or upon the Premises. The provisions of this section are for the benefit of Landlord only and shall not be construed to be for the benefit of any tenant or occupant of the Building. If any governmental license or permit, other than a Certificate of Occupancy, shall be required for the proper and lawful conduct of Tenant's business in the Premises, or any part thereof, and if failure to secure such license or permit would in any way affect Landlord, Tenant, at its sole expense, shall procure and thereafter maintain such license or permit and submit the same for inspection by Landlord. Tenant shall at all times comply with the terms and conditions of each such license or permit.

2.3 COMPLIANCE WITH CERTIFICATE OF OCCUPANCY Tenant shall not at any time use or occupy the Premises, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in violation of the Certificate of Occupancy for the Premises or for the Building.

3 PREPARATION OF THE PREMISES

3.1 CONDITION OF PREMISES. Tenant shall accept the Premises, any existing Improvements in the Premises (as defined in § 10.1 below), and the Systems and Equipment serving the same in an "as is" condition on the date the Term commences, and Landlord shall have no obligation to improve, alter, remodel, or otherwise modify the Premises prior to Tenant's occupancy or thereafter under this Lease.

4 ADJUSTMENTS OF RENT

4.1 TAXES, UTILITIES, AND OPERATING EXPENSES. In addition to the Base Rent and all other payments due under this Lease, Tenant shall pay to Landlord, in the manner set forth in this Article 4, as Additional Rent, the following amounts:

(a) **Increased Operating Expenses.** An amount equal to Tenant's Pro Rata Share of that portion of Operating Expenses paid by Landlord during each Adjustment Period which exceeds the amount of Base Operating Expenses (as all of such terms are defined in § 4.2 below).

(b) **Increased Utilities.** An amount equal to Tenant's Pro Rata Share of that portion of Utilities paid by Landlord during each Adjustment Period which exceeds the amount of Base Utilities (as all of such terms are defined in § 4.2 below).

(c) **Increased Taxes.** An amount equal to Tenant's Pro Rata Share of that portion of Real Estate Taxes paid by Landlord during each Adjustment Period which exceeds the amount of Base Real Estate Taxes (as all of such terms are defined in § 4.2 below).

Tenant's Pro Rata Share of (i) such increase in Operating Expenses over the Base Operating Expenses, (ii) such increase in Utilities over Base Utilities, and (iii) such increase in Real Estate Taxes over the Base Real Estate Taxes is sometimes referred to collectively herein as the "Rental Adjustment."

4.2 DEFINITIONS. For the purposes of this Lease, the following definitions shall apply:

(a) ***Base Operating Expenses.*** "Base Operating Expenses" means the total of Operating Expenses paid by Landlord during **calendar year 2014** (the "Base Expense Year"), as adjusted under § 4.5 below.

(b) ***Base Utilities.*** "Base Utilities" means the total of Utilities paid by Landlord during **calendar year 2014** (the "Base Utilities Year"), as adjusted under § 4.5 below.

(c) ***Base Real Estate Taxes.*** "Base Real Estate Taxes" means the total of Real Estate Taxes paid by Landlord during **calendar year 2014** (the "Base Tax Year").

(d) ***Tenant's Pro Rata Share.*** "Tenant's Pro Rata Share" as to the Building is the percentage labeled as such in the Table in § 1.2 and is calculated by dividing the agreed rentable area of the Premises (numerator) by the agreed rentable area of the Property (denominator) and expressing the resulting quotient as a percentage. "Tenant's Pro Rata Share" as to the Complex is the percentage labeled as such in the Table in § 1.2 as is calculated by dividing the agreed rentable area of the Premises (numerator) by the agreed rentable area of the Complex (denominator) and expressing the resulting quotient as a percentage. Tenant's Pro Rata Share shall be increased during the Term in proportion to any increase in the area of the Premises in accordance with the formula stated herein.

(e) ***Adjustment Period.*** "Adjustment Period" as to Operating Expenses, Utilities, and Real Estate Taxes means each calendar year of which any portion occurs during the Term, excluding the Base Year and beginning with the first calendar year immediately following the Base Year.

(f) ***Real Estate Taxes.*** "Real Estate Taxes" means all of the following charges, whether or not now customary or in the contemplation of the parties hereto, and whether or not general, special, ordinary, or extraordinary, which Landlord shall pay during any Adjustment Period because of or in connection with the ownership, leasing, or operation of the Property:

(1) *ad valorem* real property taxes;

(2) any form of assessment, license fee, license tax, business license fee, commercial rental tax, levy, charge, fee, tax, or other imposition imposed by any authority, including any city, county, state, or federal governmental agency, or any school, agricultural, lighting, transportation, housing, drainage, or other improvement or special assessment district thereof;

(3) any tax on Landlord's 'right' to rent or 'right' to other income from the Building or as against Landlord's business of leasing the Building;

(4) any assessment, tax, fee, levy, or charge in substitution, partially or totally, of any assessment tax, fee, levy or charge previously included within the definition of Real Estate Taxes, it being acknowledged by Tenant and Landlord that Proposition 13 was adopted by the voters of the State of California in the Election of June, 1978, and that assessments, taxes, fees, levies, and charges may be imposed by governmental agencies for such services as fire protection, street, sidewalk, and road maintenance, refuse removal, and for other governmental services formerly provided without charge to property owners or occupants, and it being the intention of Tenant and Landlord that all such new and increased assessments, taxes, fees, levies, and charges be included within the definition of Real Estate Taxes for the purposes of this Lease;

(5) any assessment, tax, fee, levy, or charge allocable to or measured by the area of the Building or Property or the Rent payable hereunder, including any gross income tax or excise tax levied by any city, county, state, or federal governmental agency or any political subdivision thereof with respect to the receipt of such Rent, or upon or with respect to the possession, leasing, operating, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Property or any portion thereof;

(6) any assessment, tax, fee, levy, or charge upon this transaction or any document to which Tenant is a party, creating or transferring an interest or an estate in the Building or Property;

(7) any assessment, tax, fee, levy, or charge by any governmental agency related to any transportation plan, fund, or system instituted within the geographic area of which the Building is a part; or

8) reasonable legal and other professional fees, costs and disbursements incurred in connection with proceedings to contest, determine or reduce Real Estate Taxes.

Exclusions. Notwithstanding the foregoing, Real Estate Taxes shall not include (A) federal, state, or local income taxes; (B) franchise, gift, transfer, excise, capital stock, estate, succession, or inheritance taxes; or (C) penalties or interest for late payment of Real Estate Taxes.

(g) ***Operating Expenses.*** "Operating Expenses" means all expenses, costs, and amounts (other than Real Estate Taxes and Utilities) of every kind and nature which Landlord shall pay during any Adjustment Period of which any portion occurs during the Term, because of or in connection with the ownership, management, repair, maintenance, restoration, and/or operation of the Property, including costs of the following:

(1) permits, licenses, and certificates necessary to operate, manage, and lease the Property;

(2) supplies, tools, equipment, and materials used in the operation, repair, and maintenance of the Property;

(3) all insurance premiums for any insurance policies deemed necessary or desirable by Landlord (including workers' compensation, health, accident, group life, public liability, property damage, earthquake, and fire and extended coverage insurance for the full replacement cost of the Property as required by Landlord or its lenders for the Property);

(4) the deductible portion of any claim paid under any insurance policy maintained by Landlord in connection with its management and operation of the Property;

(5) accounting, legal, inspection, consulting, concièrge, and other services;

(6) services of independent contractors;

(7) compensation (including employment taxes and fringe benefits) of all persons who perform duties in connection with the operation, maintenance, repair, or overhaul of the Building or Property, and equipment, improvements, and facilities located within the Property, including engineers, janitors, painters, floor waxers, window washers, security, parking personnel, and gardeners;

(8) operation and maintenance of a room for delivery and distribution of mail to tenants of the Building as required by the U.S. Postal Service (including an amount equal to the fair market rental value of the mail room premises);

(9) management of the Building or Property, whether managed by Landlord or an independent contractor (including an amount equal to the fair market value of any on-site manager's office);

(10) rental expenses for (or a reasonable depreciation allowance on) personal property used in maintenance, operation, or repair of the Property and installment equipment purchase or equipment financing agreements for such personal property;

(11) costs, expenditures, or charges (whether capitalized or not) required by any governmental or quasi-governmental authority after the Commencement Date;

(12) payments under any easement, operating agreement, declaration, restrictive covenant, or instrument pertaining to the sharing of costs in any planned development;

(13) amortization of capital expenses (including financing costs) incurred by Landlord after the Commencement Date in order to (A) comply with Laws, (B) reduce Property Operating Expenses or Utilities, or (C) upgrade the utility, efficiency, or capacity of any utility or telecommunication systems serving tenants of the Property;

(14) operation, repair, and maintenance of all Systems and Equipment and components thereof (including replacement of components); janitorial service; alarm and security service; window cleaning; trash removal; elevator maintenance; cleaning of walks, parking facilities, and building walls; removal of ice and snow; replacement of wall and floor coverings, ceiling tiles, and fixtures in lobbies, corridors, restrooms and other common or public areas or facilities; maintenance and repair of the roof and exterior fabric of the Building, including replacement of glazing as needed; maintenance and replacement of shrubs, trees, grass, sod, and other landscaped items, irrigation systems, drainage facilities, fences, curbs, and walkways; repaving and restriping parking facilities; and roof repairs;

(15) the operation of any on-site maintenance shop(s) and the operation and maintenance of the Athletic Facility, any other fitness center, conference rooms, and all other common areas and amenities in the Property;

(16) provision of shuttle busses, shuttle services, and drivers between the Complex and BART and SFO airport, as required by the Bay Area Regional Transportation Act and deed covenants and restrictions applicable to the Complex; and

(17) any other costs or expenses incurred by Landlord which are reasonably necessary to operate, repair, manage, and maintain the Building and Property in a first-class manner and condition and which are not otherwise reimbursed by tenants of the Building.

Exclusions. Notwithstanding the foregoing, Operating Expenses shall not include (A) depreciation, interest, and amortization on Superior Mortgages (as defined in § 18.1 below), and other debt costs or ground lease payments, if any; (B) legal fees in connection with leasing, tenant disputes, or enforcement of leases; (C) real estate brokers' leasing commissions; (D) improvements or alterations to tenant spaces; (E) the cost of providing any service directly to, and reimbursed or paid directly by, any tenant; (F) any costs expressly excluded from Operating Expenses elsewhere in this Lease; (G) costs of any items to the extent Landlord receives reimbursement from insurance proceeds or from a third party (such proceeds to be deducted from Operating Expenses in the year in which received); (H) capital expenditures, except those expressly permitted above; provided, all such permitted capital expenditures (together with reasonable financing charges) shall be amortized for purposes of this Lease over the shorter of (x) their useful lives, (y) the period during which the reasonably estimated savings in Operating Expenses equals the expenditures, or (z) three (3) years.

(h) ***Utilities.*** "Utilities" means all expenses, costs, and amounts of every kind and nature which Landlord shall pay during any Adjustment Period of which any portion occurs during the Term, because of or in connection with the electricity, power, gas, steam, oil or other fuel, water, sewer, lighting, heating, air conditioning, and ventilating delivered to or consumed or used in or on the Property.

4.3 MANNER OF PAYMENT. To provide for current payments of the Rental Adjustment, Tenant shall pay as Additional Rent during each Adjustment Period an amount equal to Landlord's estimate of the Rental Adjustment which will be payable by Tenant for such Adjustment Period. Such payments shall be made in monthly installments, commencing on the first day of the month following the month in which Landlord notifies Tenant of the amount it is to pay hereunder and continuing until the first day of the month following the month in which Landlord gives Tenant a new notice of the estimated Rental Adjustment. It is the intention hereunder to estimate from time to time the amount of Tenant's Rental Adjustment for each Adjustment Period and then to effect a reconciliation in the following year based on the actual expenses incurred for the preceding Adjustment Period, as provided in 4.4 below.

4.4 RECONCILIATION. On or before the first day of April of each year after the first Adjustment Period (or as soon thereafter as is practical), Landlord shall deliver to Tenant a statement (the "Statement") setting forth the Rental Adjustment for the preceding year. If the actual Rental Adjustment for the preceding Adjustment Period exceeds the total of the estimated monthly payments made by Tenant for such Adjustment Period, Tenant shall pay Landlord the amount of the deficiency within ten (10) days of the receipt of the Statement. If such total of estimated payments made exceeds the actual Rental Adjustment for such Adjustment Period, then Tenant shall receive a credit for the difference against payments of Rent next due. If the credit is due from Landlord on the Expiration Date, Landlord shall pay Tenant the amount of the credit, less any Rent then due. The obligations of Tenant and Landlord to make payments required under this § 4.4 shall survive the expiration or earlier termination of the Term of this Lease.

4.4.1 Changes in Method. So long as Tenant's obligations hereunder are not materially adversely affected thereby, Landlord reserves the right reasonably to change from time to time the manner or timing of the foregoing payments. In lieu of providing one Statement covering Real Estate Taxes, Utilities, and Operating Expenses, Landlord may provide separate statements, at the same or different times. No delay by Landlord in providing the Statement (or separate statements) shall be deemed a default by Landlord or a waiver of Landlord's right to require payment of Tenant's obligations for actual or estimated Real Estate Taxes, Utilities, or Operating Expenses. In no event shall a decrease in Real Estate Taxes, Utilities, or Operating Expenses below the Base Operating Expenses, Base Utilities, or Base Real Estate Taxes ever decrease the monthly Base Rent or give rise to a credit in favor of Tenant.

4.4.2 Proration of Rental Adjustment. If the Term does not commence on January 1 or does not end on December 31, Tenant's obligations to pay estimated and actual amounts towards Real Estate Taxes, Utilities, and Operating Expenses for such first or final calendar year shall be prorated to reflect the portion of such year(s) included in the Term. Such proration shall be made by multiplying the total estimated or actual (as the case may be) Real Estate Taxes, Utilities, and Operating Expenses for such calendar year(s), as well as the Base Real Estate Taxes, Base Utilities, and Base Operating Expenses, by a fraction, the numerator of which shall be the number of days of the Term during such calendar year, and the denominator of which shall be three hundred sixty-five (365).

4.5 GROSS-UP. If the Building is less than ninety-five percent (95%) occupied during the Base Period or any Adjustment Period, then Operating Expenses, Utilities, and Real Estate Taxes for the Base Period and/or such Adjustment Period shall be "grossed up" to that amount of Operating Expenses, Utilities, and Real Estate Taxes that, using reasonable projections, would normally have been incurred during the Base Period and/or such Adjustment Period if the Building had been ninety-five percent (95%) occupied during the Base Period and/or such Adjustment Period, as determined in accordance with sound accounting and management practices, consistently applied. Only those component elements or items of expense of Operating Expenses, Utilities, and Real Estate Taxes that are affected by variations in occupancy levels shall be grossed up.

4.6 ADJUSTMENT OF BASE OPERATING EXPENSES. Notwithstanding anything to the contrary contained in the Lease, the parties agree that Base Operating Expenses and Operating Expenses for any subsequent Adjustment Period (herein called "Subsequent Operating Expenses") shall be subject to further adjustment by Landlord as follows:

(a) **Exclusion of Capital Expenditures.** Landlord may exclude from Base Operating Expenses capital expenditures otherwise permitted, provided Landlord shall also exclude any amortization of such expenditures from Subsequent Operating Expenses.

(b) **Elimination of Recurring Expenses.** If Landlord eliminates from any Subsequent Operating Expenses a category of recurring expenses previously included in Base Operating Expenses, Landlord may subtract such category from Base Operating Expenses commencing with such subsequent Adjustment Period.

(c) **New Recurring Expenses.** If Landlord includes a new category of recurring Subsequent Operating Expenses not previously included in Base Operating Expenses, Landlord shall also include an amount (the "Assumed Base Amount") for such category in Base Operating Expenses commencing in such subsequent Adjustment Period.

(d) **Assumed Base Amount.** The "Assumed Base Amount" under § 4.6(c) above shall be the annualized amount of expenses for such new category in the first Adjustment Period it is included, reduced by an amount determined in Landlord's sole good faith discretion (but in no event by an amount less than five percent (5%)) for each full or partial Adjustment Period that has elapsed during the Term of the Lease before such Adjustment Period.

4.7 ADJUSTMENT OF REAL ESTATE TAXES. If Base Real Estate Taxes are reduced as the result of protest, by means of agreement, as the result of legal proceedings, or otherwise, Landlord may adjust Tenant's obligations for Real Estate Taxes in all years affected by any refund of taxes following the Base Tax Year; and Tenant shall pay Landlord within thirty (30)days after notice any additional amount required by such adjustment for any Adjustment Periods that have theretofore occurred. Tenant shall be entitled to receive a share of any refund or abatement of Real Estate Taxes received by Landlord to the extent of and in proportion to Tenant's actual contribution to the amount of Real Estate Taxes paid by Landlord during the period to which such refund or abatement relates, but in no event shall Tenant be entitled to any refund with respect to Real Estate Taxes paid by Landlord during Tenant's Base Tax Year. If Real Estate Taxes for any Adjustment Period during the Term or any extension thereof shall be increased after payment thereof by Landlord for any reason, including error or reassessment by applicable governmental authorities, Tenant shall pay Landlord upon demand Tenant's Pro Rata Share of such increased Real Estate Taxes. Tenant shall pay increased Real Estate Taxes whether Real Estate Taxes are increased as a result of increases in the assessment or valuation of the Property (whether based on a sale, change in ownership, refinancing of the Property, or otherwise), increases in the tax rates, reduction or elimination

of any rollbacks or other deductions available under current law, scheduled reductions of any tax abatement, as a result of the elimination, invalidity, or withdrawal of any tax abatement, or for any other cause whatsoever. Notwithstanding the foregoing, if any Real Estate Taxes shall be paid based on assessments or bills by a governmental authority using a fiscal year other than a calendar year, Landlord may elect to average the assessments or bills for the subject calendar year, based on the number of months of such calendar year included in each such assessment or bill.

4.8 ALLOCATION WITHIN COMPLEX. So long as the Property shall be part of the Complex collectively owned or managed by Landlord or its affiliates or collectively managed by Landlord's managing agent, Landlord may allocate Real Estate Taxes, Utilities, and Operating Expenses within the Complex and between the buildings and structures comprising the Complex and the parcels on which they are located, in accordance with sound accounting and management principles. In the alternative, Landlord shall have the right to determine, in accordance with sound accounting and management principles, Tenant's Pro Rata Share of Real Estate Taxes, Utilities, and Operating Expenses based upon the totals of each of the same for all such buildings and structures, the land constituting parcels on which the same are located, and all related facilities, including common areas and easements, corridors, lobbies, sidewalks, elevators, loading areas, parking facilities, driveways, and other appurtenances and public areas, in which event Tenant's Pro Rata Share shall be based on the ratio of the rentable area of the Premises to the rentable area of all buildings in the Complex.

4.9 LANDLORD'S RECORDS. Landlord shall maintain records with respect to Real Estate Taxes, Utilities, and Operating Expenses and determine the same in accordance with sound accounting and management practices, consistently applied. Although this Lease contemplates the computation of Real Estate Taxes, Utilities, and Operating Expenses on a cash basis, Landlord shall make reasonable and appropriate accrual adjustments to ensure that each Adjustment Period includes substantially the same recurring items. Landlord reserves the right to change to a full accrual system of accounting so long as the same is consistently applied and Tenant's obligations are not materially adversely affected. Tenant or its representative shall have the right to examine such records, upon reasonable prior written notice specifying such records Tenant desires to examine, during normal business hours at the place or places where such records are normally kept, by sending such notice no later than forty-five (45) days following the furnishing of the Statement.

4.10 OTHER TAXES PAYABLE BY TENANT. In addition to the Base Rent and any other charges to be paid by Tenant hereunder, Tenant shall, as an element of Rent, reimburse Landlord upon demand for any and all taxes payable by Landlord (other than net income taxes) which are not otherwise reimbursable under this Lease, whether or not now customary or within the contemplation of the parties, where such taxes are upon, measured by, or reasonably attributable to (A) the cost or value of Tenant's equipment, furniture, fixtures, and other personal property located at the Premises, or the cost or value of any improvements made in or to the Premises by or for Tenant, regardless of whether title to such improvements is held by Tenant or Landlord; (B) the gross or net Rent payable under this Lease, including any rental or gross receipts tax levied by any taxing authority with respect to the receipt of the Rent hereunder; (C) the possession, leasing, operation, management, maintenance, alteration, repair, use, or occupancy by Tenant of the Premises or any portion thereof; or (D) this transaction or any document to which Tenant is a party creating or transferring an interest or an estate in the Premises. Tenant shall pay any rent tax, sales tax, service tax, transfer tax, value-added tax, or any other applicable tax on the Rent or services herein or otherwise respecting this Lease.

4.11 RENT CONTROL. If the amount of Rent or any other payment due under this Lease violates the terms of any governmental restrictions on such Rent or payment, then the Rent or payment due during the period of such restrictions shall be the maximum amount allowable under those restrictions. Upon termination of the restrictions, Landlord shall, to the extent it is legally permitted, recover from Tenant the difference between the amounts received during the period of the restrictions and the amounts Landlord would have received had there been no restrictions.

5 SECURITY DEPOSIT

5.1 DEPOSIT FOR SECURITY. Tenant shall deposit with Landlord the amount of Twenty-Eight Thousand Four Hundred Forty-Nine Dollars and Thirty Cents ($28,449.30) (the "Security Deposit") upon Tenant's execution and submission of this Lease. The Security Deposit shall serve as security for the prompt, full, and faithful performance by Tenant of the terms and provisions of this Lease, including the value of future rents as damages in accordance with California Civil Code § 1951.2, as set forth in § 20.3 below. Landlord shall not be required to keep the Security Deposit separate from Landlord's general funds or pay interest on the Security Deposit.

5.1.1 Application of Deposit. In the event that Tenant is in Default hereunder and fails to cure within any applicable time permitted under this Lease, or in the event that Tenant owes any amounts to Landlord upon the expiration of this Lease, Landlord may use or apply the whole or any part of the Security Deposit for the payment of Tenant's obligations hereunder. The use or application of the Security Deposit or any portion thereof shall not prevent Landlord from exercising any other right or remedy provided hereunder or under any Law and shall not be construed as liquidated damages.

5.1.2 Restoration of Full Deposit. In the event the Security Deposit is reduced by such use or application, Tenant shall deposit with Landlord, within ten (10) days after written notice, an amount sufficient to restore the full amount of the Security Deposit. If the Premises shall be expanded at any time, or if the Term shall be extended at any increased rate of Rent, the Security Deposit shall thereupon be proportionately increased.

5.1.3 Disposition of Security Deposit. After the Expiration Date or any earlier termination of the Lease, any remaining portion of the Security Deposit shall be returned to Tenant after deduction of all amounts due as Rent or otherwise. **Tenant expressly waives the provisions of § 1950.7 of the California Civil Code.**

6 COMPLIANCE WITH LAWS

6.1 TENANT'S COMPLIANCE WITH LAWS. Tenant shall use the Premises in compliance with all applicable federal, state, county, and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders, and other such requirements, and decisions by courts in cases where such decisions are considered binding precedents in the State of California (the "State"), and decisions of federal courts applying the laws of the State (collectively "Laws"). Tenant shall, at its sole cost and expense, promptly comply with each and all of such Laws, and also with the requirements of any board of fire underwriters or other similar body now or hereafter constituted to deal with the condition, use, or occupancy of the Premises, except in the case of required structural changes not triggered by Tenant's change in use of the Premises or Tenant's alterations, additions, or improvements therein. Tenant shall comply with all applicable Laws regarding the physical condition of the Premises, but only to the extent that the applicable Laws pertain to the particular manner in which Tenant uses the Premises or the particular use to which Tenant puts the Premises, if different from that permitted under Article 2 of this Lease. Tenant shall also comply with all applicable Laws which do not relate to the physical condition of the Premises and with which only the occupant can comply, such as laws governing maximum occupancy, workplace smoking, VDT regulations, and illegal business operations, such as gambling. The judgement of any court of competent jurisdiction or the admission of Tenant in any judicial action, regardless of whether Landlord is a party thereto, that Tenant has violated any of such Laws shall be conclusive of that fact as between Landlord and Tenant.

6.1.1 Code Costs. Notwithstanding anything to the contrary in this Article 6, if the requirement of any public authority obligates either Landlord or Tenant to expend money in order to bring the Premises and/or any area of the Property into compliance with Laws as a result of (a) Tenant's particular use or alteration of the Premises; (b) Tenant's change in the use of the Premises; (c) the manner of conduct of Tenant's business or operation of its installations, equipment, or other property therein; (d) any cause or condition created by or at the instance of Tenant, other than by Landlord's performance of any work for or on behalf of Tenant; or (e) breach of any of Tenant's obligations hereunder, then Tenant shall bear all costs ("Code Costs") of bringing the Premises and/or Property into compliance with Laws, whether such Code Costs are related to structural or nonstructural elements of the Premises or Property.

6.2 LANDLORD'S COMPLIANCE WITH LAWS. Landlord represents that on the Commencement Date Landlord has no actual knowledge of any violation of any applicable Laws respecting the Premises. During the Term Landlord shall comply with all applicable Laws regarding the Premises and Property, except to the extent Tenant must comply under § 6.1 above.

7 HAZARDOUS MATERIALS

7.1 REGULATION OF HAZARDOUS MATERIALS. Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release, or discharge any "Hazardous Material" (as defined below) upon or about the Property, nor permit Tenant's employees, agents, contractors, and other occupants of the Premises to engage in such activities upon or about the Property. However, the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance, and handling within, the Premises of substances customarily used in offices, provided all of the following conditions are met:

(a) such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises, strictly in accordance with applicable Laws and the manufacturers' instructions therefor;

(b) such substances shall not be disposed of, released, or discharged on the Property and shall be transported to and from the Premises in compliance with all applicable Laws, and as Landlord shall reasonably require;

(c) if any applicable Laws or Landlord's trash removal contractor requires that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements at Tenant's expense for such disposal directly with a qualified and licensed disposal company at a lawful disposal site (subject to scheduling and approval by Landlord), and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances in the Premises; and

(d) any remaining such substances shall be completely, properly, and lawfully removed from the Property upon expiration or earlier termination of this Lease.

7.1.1 DEFINITION OF HAZARDOUS MATERIAL. The term "Hazardous Material" for purposes hereof shall mean any chemical, substance, material, or waste or component thereof which is now or hereafter listed, defined, or regulated as a hazardous or toxic chemical, substance, material, or waste or component thereof by any federal, state, or local governing or regulatory body having jurisdiction, or which would trigger any employee or community "right-to-know" requirements adopted by any such body, or for which any such body has adopted any requirements for the preparation or distribution of an MSDS.

7.2 NOTIFICATION OF LANDLORD. Tenant shall promptly notify Landlord of (A) any enforcement, cleanup, or other regulatory action taken or threatened by any governmental or regulatory authority with respect to the presence of any Hazardous Material on the Premises or the migration thereof from or to

other property; (B) any demands or claims made or threatened by any party against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Material on or from the Premises; and (C) any matters where Tenant is required by law to give a notice to any governmental or regulatory authority respecting any Hazardous Material on the Premises. Landlord shall have the right (but not the obligation) to join and participate, as a party, in any legal proceedings or actions affecting the Premises initiated in connection with any environmental, health, or safety law.

7.3 LIST OF HAZARDOUS MATERIALS. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Material then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet ("MSDS") issued by the manufacturer thereof, written information concerning the removal, transportation, and disposal of the same, and such other information as Landlord may reasonably require or as may be required by law.

7.4 CLEANUP. If any Hazardous Material is released, discharged or disposed of by Tenant or any other occupant of the Premises, or their employees, agents, or contractors, on or about the Property in violation of the foregoing provisions, Tenant shall immediately, properly, and in compliance with applicable Laws clean up and remove the Hazardous Material from the Property and any other affected property and clean or replace any affected personal property (whether or not owned by Landlord), at Tenant's expense. Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), and shall include any testing, investigation, and the preparation and implementation of any remedial action plan required by any governmental body having jurisdiction or reasonably required by Landlord. If Tenant shall fail to comply with the provisions of this § 7.2 within five (5) days after written notice by Landlord, or such shorter time as may be required by Laws or in order to minimize any hazard to persons or property, Landlord may (but shall not be obligated to) arrange for such compliance directly or as Tenant's agent through contractors or other parties selected by Landlord, at Tenant's expense (without limiting Landlord's other remedies under this Lease or applicable Laws).

7.5 CASUALTY DAMAGE. If any Hazardous Material is released, discharged, or disposed of on or about the Property and such release, discharge, or disposal is not caused by Tenant or other occupants of the Premises, or their employees, agents, or contractors, such release, discharge, or disposal shall be deemed casualty damage under Article 15 to the extent that the Premises or common areas serving the Premises are affected thereby; in such case, Landlord and Tenant shall have the obligations and rights respecting such casualty damage provided under Article 15 of this Lease.

7.6 REFRIGERANT. Tenant shall not install any refrigerant-containing systems or equipment, including refrigerators, freezers, supplemental HVAC systems or self-contained air conditioners, without Landlord's prior approval, which Landlord may withhold in its sole discretion. Unless Tenant shall have obtained Landlord's prior written approval to install existing equipment after an inspection, at Tenant's sole cost and expense, by Landlord's engineer for defects and proper proposed installation in the Premises, all refrigerant-containing equipment and/or systems which Tenant installs in the Premises shall be new. Whether Tenant's refrigerant-containing equipment or systems are defective and are properly installed shall be determined at the sole discretion of Landlord's engineer. If Tenant wishes to install any refrigerant-containing equipment or systems, Tenant shall obtain and provide Landlord with copies of all required permits associated with such equipment or systems.

7.6.1 Removal of Refrigerant. Notwithstanding anything to the contrary in this Lease, Tenant shall remove all refrigerant and refrigerant-containing equipment and/or systems installed in the Premises by or on behalf of Tenant prior to the Expiration Date of this Lease. Prior to the removal of any such refrigerant or refrigerant-containing equipment and/or systems, Tenant shall submit to Landlord for Landlord's approval, the names of Tenant's contractors and all plans and specifications for such removal. Tenant and Tenant's contractors shall comply with all legal requirements,

industry practices and rules established by Landlord in performing such removal work. Tenant shall repair any damage to the Property or the Systems and Equipment associated with such removal, and Tenant shall be responsible for the costs associated with restoring the Property to the condition which existed immediately prior to any modification undertaken by Landlord in order to accommodate Tenant's refrigerant-containing equipment or systems.

8 SERVICES AND UTILITIES

8.1 LANDLORD'S SERVICES. Landlord agrees to provide, on the terms and conditions specified herein, the following services and utilities for Tenant's use and consumption in the Premises, the cost of which shall be included in Operating Expenses and/or Utilities and reimbursed to Landlord in accordance with § 4.1 above:

(a) **Electricity.** Electricity for standard office lighting fixtures and for equipment and accessories customary for offices, provided (i) the connected electrical load of all the same does not exceed an average of four (4) watts per usable square foot of the Premises (or such lesser amount as may be available, based on the safe and lawful capacity of the existing electrical circuit(s) and facilities serving the Premises); (ii) the electricity will be at nominal 120 volts, single phase (or 110 volts, depending on available service in the Building); and (iii) the safe and lawful capacity of the existing electrical circuit(s) serving the Premises is not exceeded. Landlord will permit its electric feeders, risers, and wiring servicing the Premises to be used by Tenant to the extent available and safely capable of being used for such purpose.

(b) **Telecommunications Interface.** Interface with the telephone network at the demarcation point or minimum point of entry ("MPOE") supplied by the local regulated public utility by means of Landlord's INC consisting of cable pairs with a capacity consistent with the engineering standards to which the Building was designed.

(c) **HVAC.** Heat, ventilation, and air-conditioning ("HVAC") to provide a temperature required, in Landlord's reasonable opinion and in accordance with applicable Laws, for the comfortable occupancy of the Premises during business hours (as defined in § 8.1.1 below). Landlord shall not be responsible for inadequate air-conditioning or ventilation to the extent the same occurs because Tenant uses any item of equipment consuming more than 500 watts at rated capacity without providing adequate air-conditioning and ventilation therefor.

(d) **Water.** Water for drinking, lavatory and toilet purposes at those points of supply provided for nonexclusive general use of other tenants at the Property.

(e) **Janitorial Services.** Customary office cleaning and trash removal service Monday through Friday or Sunday through Thursday in and about the Premises.

(f) **Elevator Services.** Operatorless passenger elevator service and freight elevator service (if the Property has such equipment serving the Premises, and subject to scheduling by Landlord) in common with Landlord and other tenants and their contractors, agents, and visitors.

8.1.1 Business Hours. The term *business hours* in this Lease shall mean the hours from 8:00 a.m. until 6:00 p.m. on Monday through Friday and from 9:00 a.m. until 1:00 p.m. on Saturday throughout the year, except for New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and any other federally-observed holiday which may be created during the Term ("Holidays").

8.2 Additional Electrical Capacity. Any additional risers, feeders, or other equipment or service proper or necessary to supply Tenant's electrical requirements will be installed by Landlord, upon written request of Tenant, at the sole cost and expense of Tenant, if, in Landlord's sole judgement, the same are necessary and will not cause permanent damage or injury to the Property, the Premises, or the Systems and Equipment or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs, or expense or interfere with or disturb other tenants or occupants. Rigid conduit only will be allowed.

8.2.1 Approved Electrical Load. Tenant agrees not to connect any additional electrical equipment of any type to the building electric distribution system, beyond that on Tenant's approved plans for initial occupancy, other than lamps, typewriters, and other office machines which consume comparable amounts of electricity or other electrical equipment which in the aggregate consumes the same amount of electricity as those approved for initial occupancy and will not result in any overload of electrical circuits, lines, or wiring, without Landlord's prior written consent. In no event shall Tenant use or install any fixtures, equipment, or machines the use of which in conjunction with other fixtures, equipment, and machines in the Premises would result in an overload or the electrical circuits servicing the Premises. Tenant covenants and agrees that at all times its use of electric current shall never exceed the capacity of the feeders to the Building or the risers or wiring installation existing at the time in question.

8.3 Additional Telecommunications Capacity. If Tenant desires any telecommunications capacity in excess of that available as of the Commencement Date in the form of the INC between the MPOE and the telephone closet nearest the Premises and provided pursuant to § 8.1 above, Tenant shall bear the cost of installing additional risers or INC or replacing existing INC serving the Premises pursuant to Article 9 below.

8.4 Replacement Bulbs and Tubes. Tenant shall furnish, install, and replace, as required, all non-Building-standard lighting tubes, lamps, bulbs, and ballasts required in the Premises, at Tenant's sole cost and expense. All lighting tubes, lamps, bulbs, and ballasts so installed become Landlord's property upon the expiration or sooner termination of this Lease.

8.5 Twenty-Four Hours Access. Subject to the provisions of § 8.8, Tenant, its employees, agents, and invitees shall have access to the Premises twenty-four (24) hours a day, seven (7) days a week. Landlord may restrict access outside of business hours by requiring persons to show a badge or identification card issued by Landlord. Landlord shall not be liable for denying entry to any person unable to show the proper identification. Landlord may without liability temporarily close the Building if required because of a life-threatening or Building-threatening situation.

8.6 Extra Services. Landlord shall, subject to all applicable Laws, seek to provide such utilities or services in excess of those Landlord is required to provide under § 8.1 above as Tenant may from time to time request, if the same are reasonable and feasible for Landlord to provide and do not involve modifications or additions to the Property or the Systems and Equipment and if Landlord shall receive Tenant's request within a reasonable period prior to the time such extra utilities or services are required. Landlord may comply with written or oral requests by any officer or employee of Tenant, unless Tenant shall notify Landlord of, or Landlord shall request, the names of authorized individuals (up to three (3) for each floor on which the Premises are located) and procedures for written requests. Tenant shall, for such extra utilities or services, pay such charges as Landlord shall from time to time establish.

8.6.1 Extraordinary Service Usage. If Tenant shall utilize Building services for the Premises at any time other than during business hours, Landlord shall furnish such extraordinary services (excluding air-conditioning, except as provided below) at Landlord's then-current prevailing rate for such services. In addition to the foregoing services, if Tenant shall require air-conditioning service for the Premises at any time other than during business hours, Landlord shall, upon reasonable

advance notice from Tenant, furnish such after-hours air-conditioning service at Landlord's then-current prevailing rate for such services as a separate charge; provided, however, in the event Tenant requests such after-hours air-conditioning service at a time not immediately preceding or immediately succeeding times when "regular hours" service is being furnished hereunder, then Tenant must request not less than five (5) hours of after-hours air-conditioning service. Notwithstanding anything contained herein to the contrary, Landlord's prevailing rate for the extraordinary services described herein shall be subject to increase from time to time as Landlord may reasonably determine.

8.6.2 Payment for Excess Usage. All charges for extra utilities or services or those requested outside business hours shall be due at the same time as the installment of Base Rent with which the same are billed, or if billed separately, shall be due within twenty (20) days after such billing.

8.6.3 Changes in HVAC System. Use of the Premises, or any part thereof, in a manner exceeding the design conditions (including occupancy and connected electrical load) for the heating or cooling units in the Premises, or rearrangement of partitioning which interferes with normal operation of the HVAC system in the Premises, may require changes in the HVAC system servicing the Premises. Such changes shall be made by Tenant, at its expense, as Tenant's Changes pursuant to Article 9. Tenant shall not change or adjust any closed or sealed thermostat or other element of the HVAC system without Landlord's express prior written consent.

8.6.4 Separate Metering. Landlord may install and operate meters or any other reasonable system for monitoring or estimating any services or utilities used by Tenant in excess of those required to be provided by Landlord under this Article 8 (including a system for Landlord's engineer reasonably to estimate any such excess usage). If such system indicates such excess services or utilities, Tenant shall pay Landlord's reasonable charges for installing and operating such system and any supplementary air-conditioning, ventilation, heat, electrical, or other systems or equipment (or adjustments or modifications to the existing Systems and Equipment), and Landlord's reasonable charges for such amount of excess services or utilities used by Tenant. If Tenant's use of extra utilities or services causes Landlord's regulated baseline quantities of water, gas, electricity, or any other utility or service to be exceeded, Tenant shall pay for such excess quantities of such utilities or services at the rate which is imposed upon Landlord for quantities in excess of the regulated baseline. In addition, Tenant shall pay prior to delinquency any fine or penalty which may be imposed upon or assessed against Landlord or the Building or the Property by virtue of Tenant's excess usage of any services or utilities, including water, gas, and electricity.

8.7 INTERRUPTION OF SERVICES. Landlord does not warrant that any services or utilities provided hereunder for Tenant's use in the Premises will be free from shortages, failures, variations, or interruptions caused by repairs, maintenance, replacements, improvements, alterations, changes of service, strikes, lockouts, labor controversies, accidents, inability to obtain services, fuel, steam, water or supplies, governmental requirements or requests, or other causes beyond Landlord's reasonable control, including interference with light or other incorporeal hereditaments and any interruption in services or any failure to provide services to Landlord by a designated utility company at the demarcation point at which Landlord accepts responsibility for such service or at any point prior thereto, which interference impedes Landlord in furnishing plumbing, HVAC, electrical, sanitary, life safety, elevator, telecommunications, or other Building services, utilities, or the Systems and Equipment. None of the same shall be deemed an eviction or disturbance of Tenant's use and possession of the Premises or any part thereof, shall render Landlord liable to Tenant for abatement of Rent, or shall relieve Tenant from performance of Tenant's obligations under this Lease. Landlord in no event shall be liable for damages by reason of loss of profits, business interruption, or other compensatory or consequential damages.

8.8 SAFETY AND SECURITY DEVICES, SERVICES, AND PROGRAMS. The parties acknowledge that safety and security devices, services, and programs provided by Landlord, if any, while intended to deter crime and ensure safety, may not in given instances prevent theft or other criminal acts or ensure safety of persons or property, and such devices, services and programs shall not under any circumstances be deemed to be a guaranty, representation, or warranty by Landlord to Tenant or any third parties as to the safety or protection of person or property. The risk that any safety or security device, service, or program may not be effective, or may malfunction, or be circumvented by a criminal, is assumed by Tenant with respect to Tenant's property and interests; and Tenant shall obtain insurance coverage to the extent Tenant desires protection against such criminal acts and other losses, as further described in Article 14. Tenant agrees to coöperate in any reasonable safety or security program developed by Landlord or required by Law.

9 TENANT'S CHANGES

9.1 TENANT'S REQUESTED CHANGES. Tenant may, subject to § 9.2 below, from time to time during the Term of this Lease, at its expense, make such alterations, additions, installations, substitutions, improvements, and decorations (collectively "Tenant's Changes") in and to the Premises as Tenant may reasonably consider necessary for the conduct of its business in the Premises (except for changes which would require modification of the Property outside the Premises), on the following conditions:

(a) the outside appearance or the strength of the Building or of any of its structural parts shall not be affected, and Tenant shall cause no penetration of the roof or the exterior fabric of the Building;

(b) no part of the Building outside of the Premises shall be physically affected;

(c) the proper functioning of any of the Systems and Equipment shall not be adversely affected, and the usage of such systems by Tenant shall not be increased;

(d) no such change shall require the addition of new INC riser cable or expand the number of telephone pairs dedicated to the Premises by the Buildings' telecommunications engineering design;

(e) in performing the work involved in making such changes, Tenant shall be bound by and observe all of the conditions and covenants contained in the following sections of this Article 9; and

(f) with respect to Tenant's Changes, Tenant shall make all arrangements for, and pay all expenses incurred in connection with, use of the freight elevators servicing the Premises.

9.2 PLANS AND APPROVAL. Before proceeding with any Tenant's Changes, Tenant shall advise Landlord thereof and arrange a meeting with the Building Manager, the Building Architect, and/or the Building Contractor, as required by Landlord in relation to the scope of the proposed Changes. Except in extraordinary circumstances which would reasonably require an exception, all work to be performed in the Building shall be performed by the Building Contractor on the basis of plans and drawings prepared by the Building Architect. If Landlord grants permission for Tenant to utilize another contractor and/or architect for its Changes, before proceeding with any Tenant's Changes, Tenant shall submit to Landlord plans and specifications and all changes and revisions thereto for the work to be done for Landlord's reasonable approval; and Tenant shall, upon demand of Landlord, pay to Landlord the reasonable costs incurred and paid to third parties by Landlord for the review of such plans and specifications and all changes and revisions thereto by its architect, engineer, and other consultants. Landlord may as a condition of its approval require Tenant to make reasonable revisions in and to the plans and specifications. Landlord may require Tenant to post a bond or other security reasonably satisfactory to

Landlord to insure the completion of such change. If Landlord consents to any Tenant's Changes or supervises the work of constructing any Tenant's Changes, such consent or supervision shall not be deemed a warranty as to the adequacy of the design, workmanship, or quality of materials, and Landlord hereby expressly disclaims any responsibility or liability for the same. Landlord shall under no circumstances have any obligation to repair, maintain, or replace any portion of such work.

9.2.1 As-Built Plans. Within thirty (30) days after completion of Tenant's Changes requiring the submission of plans to Landlord, Tenant shall furnish to Landlord a complete set of "as-built" plans and specifications.

9.3 PERMITS AND PERFORMANCE. Tenant, at its expense, shall obtain all necessary governmental permits and certificates for the commencement and prosecution of Tenant's Changes and for final approval thereof upon completion and shall furnish copies thereof to Landlord. Tenant shall cause Tenant's Changes to be performed in compliance therewith and with all applicable Laws and requirements of public authorities and with all applicable requirements of insurance bodies, and in good and workmanlike manner, using new materials and equipment at least equal in quality and class to the original installations in the Property. Tenant's Changes shall be performed in such manner as not unreasonably to interfere with, delay, or impose any additional expense upon Landlord in the renovation, maintenance, or operation of the Property or any portion thereof, unless Tenant shall indemnify Landlord therefor to the latter's reasonable satisfaction.

9.4 CONTRACTORS. All electrical, mechanical, and plumbing work in connection with Tenant's Changes shall be performed by Landlord's contractors at Tenant's expense. If Tenant shall request any electrical, mechanical, or plumbing work in connection with Tenant's Changes, Landlord shall request Landlord's contractors to furnish Tenant with prices to perform the same prior to prosecuting same. In addition to the foregoing, and notwithstanding anything to the contrary in this Article 9, Landlord may, at Landlord's option, require that the work of constructing any Tenant's Changes be performed by Landlord's contractor, in which case the cost of such work shall be paid for before commencement of the work.

9.5 SUPERVISION AND FEE. Landlord may require that all work of constructing Tenant's Changes be performed under Landlord's supervision. If Landlord does not elect to require that Tenant use Landlord's contractor, and if Tenant chooses to use its own contractor for the work of constructing Tenant's Changes, Tenant shall pay to Landlord upon completion of any such work by Tenant's contractor an administrative fee of fifteen percent (15%) of the cost of the work, to cover Landlord's overhead in reviewing Tenant's plans and specifications and performing any supervision of the work of Tenant's Changes. If Tenant chooses to use Landlord's contractor for such work, Tenant shall pay to Landlord upon completion an administrative fee equal to five percent (5%) of the cost of the work.

9.6 RESTORATION OF FIXTURES. If any of Tenant's Changes shall involve the removal of any fixtures, equipment, or other property in the Premises which are not Tenant's Property (as defined in Article 10), such fixtures, equipment, or other property shall be promptly replaced, at Tenant's expense, with new fixtures, equipment, or other property (as the case may be) of like utility and at least equal value, unless Landlord shall otherwise expressly consent in writing; and Tenant shall, upon Landlord's request, store and preserve, at Tenant's sole cost and expense, any such fixtures, equipment or property so removed and shall return same to Landlord upon the expiration or sooner termination of this Lease.

9.7 MECHANIC'S LIENS. Tenant shall keep the Property and Premises free from any mechanic's, materialman's, or similar liens or other such encumbrances, including the liens of any security interest in, conditional sales of, or chattel mortgages upon, any materials, fixtures, or articles so installed in and constituting part of the Premises, in connection with any Tenant's Changes on or respecting the Premises not performed by or at the request of Landlord and shall indemnify, defend, protect, and hold Landlord harmless from and against any claims, liabilities, judgements, or costs (including attorneys' fees) arising

out of the same or in connection with any such lien, security interest, conditional sale or chattel mortgage or any action or proceeding brought thereon. Tenant shall give Landlord written notice at least twenty (20) days prior to the commencement of work on any Tenant's Change in the Premises (or such additional time as may be necessary under applicable Laws), in order to afford Landlord the opportunity of posting and recording appropriate notices of nonresponsibility. Tenant shall remove any such lien or encumbrance by bond or otherwise within thirty (30) days after written notice by Landlord; and if Tenant shall fail to do so, Landlord may pay the amount necessary to remove such lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid shall be deemed Additional Rent under this Lease payable upon demand, without limitation as to other remedies available to Landlord under this Lease. Nothing contained in this Lease shall authorize Tenant to do any act which shall subject Landlord's title to the Property or Premises to any liens or encumbrances, whether claimed by operation of law or express or implied contract. Any claim to a lien or encumbrance upon the Property or Premises arising in connection with any Work on or respecting the Premises not performed by or at the request of Landlord shall be null and void, or, at Landlord's option, shall attach only against Tenant's interest in the Premises and shall in all respects be subordinate to Landlord's title to the Property and Premises.

9.8 NOTICES OF VIOLATION. Tenant, at its expense, and with diligence and dispatch, shall procure the cancellation or discharge of all notices of violation arising from or otherwise connected with Tenant's Changes which shall be issued by any governmental, public, or quasi-public authority having or asserting jurisdiction. However, nothing herein contained shall prevent Tenant from contesting, in good faith and at its own expense, any such notice of violation, provided that Landlord's rights hereunder are in no way compromised or diminished thereby.

9.9 INDUSTRIAL RELATIONS. Tenant agrees that the exercise of its rights pursuant to the provisions of this Article 9 or any other provision of this Lease shall not be done in a manner which would create any work stoppage, picketing, labor disruption, or dispute or violate Landlord's union contracts affecting the Property and/or Complex or interfere with the business of Landlord or any Tenant or occupant of the Building. Tenant shall, immediately upon notice from Landlord, cease any activity, whether or not permitted by this Lease, giving rise to such condition. If Tenant fails to do so, Landlord, in addition to any rights available to it under this Lease and pursuant to Law, shall have the right to an *ex parte* injunction without notice.

10 TENANT'S PROPERTY

10.1 FIXTURES AND IMPROVEMENTS. All fixtures, equipment, improvements, alterations, and appurtenances attached to or built into the Premises at the commencement of or during the Term of this Lease, including cabinets, sinks, faucets, appliances, hot water heaters, etc. (collectively "Improvements"), whether or not by or at the expense of Tenant, shall be and remain a part of the Premises, shall be deemed the property of Landlord, and shall not be removed by Tenant, except as expressly provided in Article 11 below.

10.2 TENANT'S PROPERTY AND TRADE FIXTURES. All movable partitions, trade fixtures, office machinery and equipment, communications equipment, and computer equipment (whether or not attached to or built into the Premises) which are installed in the Premises by or for the account of Tenant, without expense to Landlord and which can be removed without structural damage to the Property, and all furniture, furnishings, and other articles of movable personal property owned by Tenant and located in the Premises (collectively "Tenant's Property") shall be and shall remain the property of Tenant and may be removed by it at any time during the Term of this Lease; provided that if any of Tenant's Property is removed, Tenant or any party or person entitled to remove same shall repair or pay the cost of repairing any damage to the Premises or to the Property resulting from such removal. Any equipment or other property for which Landlord shall have granted any allowance or credit to Tenant or which has replaced such items originally provided by Landlord at Landlord's expense shall not be deemed to have been installed by or for the account of Tenant, without expense to Landlord, and shall not be considered Tenant's Property.

11 CONDITION UPON SURRENDER

11.1 CONDITION AND RESTORATION. At or before the Expiration Date or the date of any earlier termination of this Lease, or as promptly as practicable using Tenant's best efforts after such an earlier termination date, Tenant, at its expense, shall do all of the following:

(a) surrender possession of the Premises in the condition required under § 12.1 below, ordinary wear and tear excepted;

(b) surrender all keys, any key cards, and any parking stickers or cards to Landlord and give Landlord in writing the combinations of any locks or vaults then remaining in the Premises;

(c) remove from the Premises all of Tenant's Property, including any data wiring and cabling that Tenant has installed, except such items thereof as Tenant shall have expressly agreed in writing with Landlord were to remain and to become the property of Landlord; and

(d) fully repair any damage to the Premises or the Property resulting from such removal.

Tenant's obligations herein shall survive the expiration or earlier termination of the Lease, unless expressly provided to the contrary herein. All Improvements and other items in or upon the Premises (except Tenant's Property), whether installed by Tenant or Landlord, shall be Landlord's property and shall remain upon the Premises, all without compensation, setoff, allowance, or credit to Tenant; provided, however, that if prior to such expiration or earlier termination Landlord so directs by notice, Tenant shall promptly remove such of the Improvements in the Premises as are designated in such notice and shall restore the Premises to their condition prior to the installation of such Improvements. Notwithstanding the foregoing, Landlord shall not require removal of customary office improvements installed pursuant to the Work Letter Agreement, if any (except as expressly provided to the contrary therein), or installed by Tenant with Landlord's written approval (except as expressly required by Landlord in connection with granting such approval).

11.2 TENANT'S FAILURE TO REMOVE OR RESTORE. If Tenant shall fail to perform any repairs or restoration or fail to remove any items from the Premises as required under this Article 11, Landlord may do so, and Tenant shall pay Landlord the cost thereof upon demand. All property removed from the Premises by Landlord pursuant to any provisions of this Lease or any Law may be handled or stored by Landlord at Tenant's expense, and Landlord shall in no event be responsible for the value, preservation, or safekeeping thereof. All property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after expiration or earlier termination of this Lease or Tenant's right to possession shall at Landlord's option be conclusively deemed to have been conveyed by Tenant to Landlord as if by bill of sale without payment by Landlord. Unless prohibited by applicable Laws, Landlord shall have a lien against such property for the costs incurred in removing and storing the same.

12 REPAIRS AND MAINTENANCE

12.1 TENANT'S CARE OF PREMISES. Except for customary cleaning and trash removal provided by Landlord under § 8.1 above and damage covered under Article 15, Tenant shall keep the Premises in good and sanitary condition, working order, and repair, including carpet, wall-covering, doors pertinent to and within the Premises, plumbing, all telecommunications cables and wiring within Tenant's

Premises ("IW") from the interface of such IW with the INC, and other fixtures, equipment, alterations, and improvements, whether installed by Landlord or Tenant. In addition, Tenant, at its expense, shall promptly make all repairs, ordinary or extraordinary, interior or exterior, structural or otherwise, in and about the Premises and the Property, as shall be required by reason of (a) the performance or existence of Tenant's Work or Tenant's Changes; (b) the installation, use, or operation of Tenant's Property in the Premises; (c) the moving of Tenant's Property in or out of the Building; or (d) the misuse or neglect of Tenant or any of its employees, agents, or contractors. Tenant, at its expense, shall replace all scratched, damaged, or broken doors or other glass in or about the Premises and shall be responsible for all repairs, maintenance, and replacement of wall and floor coverings in the Premises and for the repair and maintenance of all lighting fixtures therein. All repairs except for emergency repairs made by Tenant as provided herein shall be performed by contractors or subcontractors approved in writing by Landlord prior to commencement of such repairs, which approval shall not be unreasonably withheld or delayed. If Tenant does not promptly make such arrangements, Landlord may, but need not, make such repairs, maintenance, and replacements, and the costs paid or incurred by Landlord therefor shall be reimbursed by Tenant promptly after request by Landlord.

12.2 LANDLORD'S CARE OF PROPERTY. Landlord, at its expense, shall keep and maintain the common areas of the Property and the Systems and Equipment serving the Premises in good working order, condition, and repair and shall make all repairs, structural and otherwise, interior and exterior, as and when needed in or about the Premises, except for those repairs for which Tenant is responsible pursuant to § 12.1 above or any other provisions of this Lease. Landlord shall maintain and repair all INC in the Building, and Tenant shall have no right to make repairs to INC. The cost of Landlord's maintenance and repairs pursuant to this Article 12 shall be reimbursed to Landlord to the extent provided in Article 4 above.

12.3 WAIVER BY TENANT. Tenant waives the benefits of any statute now or hereafter in effect which would otherwise afford Tenant the right to make repairs at Landlord's expense or to terminate this Lease because of Landlord's failure to keep the Premises in good order, condition, and repair.

13 RULES AND REGULATIONS

13.1 OBSERVANCE AND MODIFICATION. Tenant and its employees and agents shall faithfully observe and comply with the Rules and Regulations attached hereto as Exhibit C (the "Rules") and such reasonable changes therein (whether by modification, elimination, or addition) as Landlord at any time or times hereafter may make and communicate in writing to Tenant, so long as such changes do not unreasonably affect the conduct of Tenant's business in the Premises, except as required by any applicable Law; provided, however, that in case of any conflict or inconsistency between the provisions of this Lease and any of the Rules as originally promulgated or as changed, the provisions of this Lease shall control.

13.2 APPLICATION TO TENANT. Nothing in this Lease shall be construed to impose upon Landlord any obligation to Tenant to enforce the Rules or the terms, covenants, or conditions in any other lease, as against any other tenant, and Landlord shall not be liable to Tenant for violation of the same by any other tenant or its employees, agents, or visitors.

14 INSURANCE AND INDEMNIFICATION

14.1 TENANT'S INSURANCE. Tenant shall obtain and maintain in effect at all times during Tenant's possession of the Premises the following insurance coverages and policies:

14.1.1 Liability Insurance. Tenant shall maintain a policy of commercial general liability insurance, which shall include coverages for (a) personal injury; (b) broad-form contractual liability; (c) owner's (*i.e.*, Tenant's) & contractor's protective; (d) automobile liability; and (e) broad-form property damage liability. The minimum limits of liability shall be a combined single limit with

respect to each occurrence of not less than Two Million Dollars ($2,000,000) and an aggregate limit of not less than Three Million Dollars ($3,000,000). The policy shall contain a cross-liability endorsement and a severability of interest clause. Tenant shall increase the insurance coverage as required by Landlord's lender or if Landlord's insurance consultant believes that the coverage is not adequate.

14.1.2 Tenant's Business Personal Property Insurance. Tenant shall maintain on all of its business personal property, including valuable business papers and accounts receivable; operating supplies; inventory; and furniture, fixtures, and equipment (whether owned, leased, or rented) (collectively "Business Personal Property") an "all risk" property damage insurance policy including coverages for earthquake damage and sprinkler leakage and containing an agreed amount endorsement (or, if applicable, a business owner's policy with a no-coinsurance provision) in an amount not less than one hundred percent (100%) of the full replacement cost valuation of such Business Personal Property. The proceeds from any such policy shall be used by Tenant for the replacement of such Business Personal property.

14.1.3 Workers' Compensation Insurance. Tenant shall maintain workers' compensation insurance as required by law and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars ($500,000).

14.1.4 Business Interruption/Extra Expense Insurance. Tenant shall maintain business interruption or (if applicable) contingent business interruption and extra expense insurance in such amounts as will reimburse Tenant for direct or indirect loss of earnings and incurred costs attributable to the perils commonly covered by Tenant's property insurance described in § 14.1.2 above but in no event less than the average total of Tenant's annual gross receipts during the three-year period immediately preceding such interruption or loss. Such insurance will be carried with the same insurer that issues the insurance for Tenant's Business Personal Property pursuant to § 14.1.2 above.

14.1.5 Other Coverage. Tenant, at its cost, shall maintain such other insurance as Landlord may reasonably require from time to time, but in no event may Landlord require any other insurance which is not then available at commercially reasonable rates.

14.2 TENANT'S INSURANCE CRITERIA. All insurance required to be maintained by Tenant under this Lease shall conform to the following criteria:

(i) Tenant's insurance shall be issued by insurance companies authorized to do business in the State of California with a financial rating of at least A:XIII for any property insurance and at least A-:IX for any liability insurance, as rated in the most recent edition of *Best's Insurance Reports*;

(ii) Tenant's insurance shall be issued as primary and noncontributory;

(iii) Tenant's liability and property insurance policies shall name Tenant as the insured and Landlord, Landlord's agents, and any Lessors and Holders (as such terms are defined in § 18.1 below) whose names shall have been furnished to Tenant as additional insureds;

(iv) Tenant's insurance shall contain an endorsement requiring at least thirty (30) days' written notice from the insurance company to each insured and additional insured before cancellation or any material change in the coverage, scope, or amount of any policy; and

(v) with respect to damage to or loss of Tenant's Business Personal Property, a waiver of subrogation must be obtained, as required under § 14.4 below.

14.2.1 Blanket Coverage. All of the insurance requirements set forth herein on the part of Tenant to be observed shall be deemed satisfied if the Premises are covered by a blanket insurance policy complying with the limits, requirements, and criteria contained in this Article 14 insuring all or most of Tenant's facilities in California.

14.2.2 Evidence of Coverage. A duplicate original policy or a certificate of insurance shall be deposited with Landlord at the commencement of the Term or, if earlier, upon Tenant's taking possession of the Premises; and on renewal of the policy a certificate of insurance listing the insurance coverages required hereunder and naming the appropriate additional insureds shall be deposited with Landlord not less than seven (7) days before expiration of the policy.

14.3 LANDLORD'S INSURANCE. Landlord shall maintain "all risk" property damage insurance containing an agreed amount endorsement covering not less than one hundred percent (100%) of the full insurable replacement cost valuation of (y) the Building and the tenant improvements, betterments, and the alterations thereto; and (z) Landlord's personal property, business papers, furniture, fixtures, and equipment (collectively "Landlord's Property"), exclusive of the costs of excavation, foundations and footings, and risks required to be covered by Tenant's insurance, and subject to commercially reasonable deductibles. Landlord shall also obtain and keep in full force the following policies of insurance: (a) commercial general liability insurance; (b) loss of rent insurance (also known as rent continuation insurance); (c) workers' compensation insurance, if required by applicable Law; and (d) such other insurance as Landlord deems appropriate or as may be required by any Holder or Lessor.

14.4 RELEASES AND WAIVERS OF SUBROGATION. The purpose of this provision is to allow Landlord and Tenant to allocate and assume certain risks to coincide with insurance coverages required to be maintained pursuant to the terms to this Lease. Landlord and Tenant recognize the benefit that each will receive from the waivers of subrogation each is required to obtain pursuant to this § 14.4 and that there are significant advantages to each in connection with minimizing duplication of insurance coverages. Accordingly, Landlord and Tenant agree to accept and place the limitations which follow on each other's respective liabilities and responsibility for damages in order to coincide with required insurance coverages.

14.4.1 Tenant's Property Agreement. In light of Tenant's agreement to insure Tenant's Business Personal Property in accordance with § 14.1.2 above, Tenant agrees that Landlord will have no liability to Tenant in the event Landlord damages or destroys, negligently or otherwise, all or any part of Tenant's Business Personal Property. Tenant will cause to be placed in its insurance policies covering Tenant's Business Personal Property a waiver of subrogation so that its insurance company will not become subrogated to Tenant's rights and will not be able to proceed against Landlord in connection with any such damage or destruction.

14.4.2 Landlord's Property Agreement. In light of Landlord's agreement to insure Landlord's Property in accordance with § 14.3 above, Landlord agrees that Tenant will have no liability to Landlord in the event that Tenant damages or destroys, negligently or otherwise, all or any part of Landlord's Property. Landlord will cause to be placed in its insurance policies covering Landlord's Property a waiver of subrogation so that its insurance company will not become subrogated to Landlord's rights and will not be able to proceed against Tenant in connection with any such damage or destruction.

14.4.3 Tenant's Release. Landlord shall not be responsible or liable to Tenant for any damages or destruction to Tenant's Business Personal Property caused by Landlord's employees, agents, visitors, invitees, guests, or independent contractors (collectively "Landlord's Associates"), and Tenant hereby releases Landlord from any claims, liabilities, demands, losses, damages, consequential damages, and the like, including reasonable attorneys' fees and court costs (collectively "Claims") resulting from damage or destruction to Tenant's Business Personal Property caused directly or indirectly by Landlord and/or Landlord's Associates; provided, however, that nothing herein shall be deemed to release Landlord's independent contractors from any such Claims Tenant may have against Landlord's independent contractors.

14.4.4 Landlord's Release. Tenant shall not be responsible or liable to Landlord for any damages or destruction to Landlord's Property caused by Tenant's employees, agents, visitors, invitees, guests, or independent contractors (collectively "Tenant's Associates"), and Landlord hereby releases Tenant from any Claims resulting from damage or destruction to Landlord's Property caused directly or indirectly by Tenant and/or Tenant's Associates; provided, however, that nothing herein shall be deemed to release Tenant's independent contractors from any such Claims Landlord may have against Tenant's independent contractors.

14.4.5 Damage to Business and Loss of Rents. In light of Landlord's agreement to carry continuation of rent insurance pursuant to § 14.3 above and Tenant's agreement to carry business interruption insurance (extra expense insurance) in accordance with § 14.1.4 above, in the event that Landlord's Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Tenant and/or by Tenant's Associates, Landlord shall have no rights against Tenant by virtue of such damage or destruction, and Landlord hereby releases Tenant from all Claims, including claims for loss of rent, by Landlord directly or indirectly resulting from the damage or destruction of Landlord's Property by conduct by Tenant and/or by Tenant's Associates. Likewise, in the event that Tenant's Business Personal Property is damaged or destroyed because of any act or conduct, negligent or otherwise, by Landlord and/or by Landlord's Associates, Tenant shall have no rights against Landlord by virtue of such damage or destruction, and Tenant hereby releases Landlord from all Claims by Tenant directly or indirectly resulting from the damage or destruction to Tenant's Business Personal Property by the conduct of Landlord and/or Landlord's Associates, including Claims for loss of business or loss of profits. Notwithstanding the foregoing, nothing herein shall be deemed to release Tenant's or Landlord's independent contractors from any liability to Tenant and/or Landlord.

14.4.6 Injury and Death to Individuals. Landlord and Tenant understand that waivers of subrogation do not apply to injury to and death of individuals. Landlord and Tenant shall each carry insurance, as provided by this Article 14, in connection with injury and death to individuals. Landlord hereby agrees to indemnify and hold Tenant harmless from any Claims which Tenant may otherwise have with respect to injury or death to individuals occurring within the Property but outside the Premises, except to the extent that such injury or death is caused by Tenant and/or Tenant's Associates, through negligence or otherwise, and is not covered by the insurance Landlord is required to carry under this Lease. Likewise, Tenant agrees to indemnify, defend, protect, and hold Landlord harmless from any Claims for injury or death to persons occurring within the Premises or caused, directly or indirectly, by Tenant or Tenant's Associates outside the Premises, except to the extent such injuries or death are caused by Landlord and/or Landlord's Associates, through negligence or otherwise, and are not covered by the insurance Tenant is required to carry under this Lease.

14.4.7 Abatement of Rent. Except as may be expressly provided elsewhere in this Lease, Tenant shall not be entitled to Rent abatement and shall not otherwise have, and hereby releases Landlord from, any Claims resulting from Tenant's inability to utilize all or any part of the Premises, except to the extent that Tenant is unable to use all or any part of the Premises and does not use all or any part of the Premises as a result of Landlord's intentional decision to refuse to provide access to the Building and/or the Premises and/or to provide services and/or utilities to Tenant as required to be provided by Landlord to Tenant pursuant to this Lease, where such refusal is not caused by a Force Majeure occurrence.

14.4.8 Availability of Waiver of Subrogation. If an insurance policy cannot be obtained with a waiver of subrogation or is obtainable only by the payment of an additional premium charge above that charged by insurance companies issuing policies without waiver of subrogation, the party undertaking to obtain the insurance shall notify the other party of this fact. The other party shall have a period of ten (10) days after receiving the notice either to place the insurance with a company that is reasonably satisfactory to the other party and that will carry the insurance with a waiver of subrogation at no additional cost or to agree to pay the additional premium if such a policy is obtainable at additional cost. If the insurance cannot be obtained or the party in whose favor a waiver of subrogation is desired refuses to pay the additional premium charged, the other party is relieved of the obligation to obtain a waiver of subrogation with respect to the particular insurance involved.

14.5 OTHER CASES OF DAMAGE OR INJURY. In all cases not covered by the foregoing provisions of this Article 14, Tenant hereby assumes all risk of damage to property or injury to persons in, upon, or about the Premises from any cause other than the active negligence or intentional misconduct of Landlord and its agent or employees. Without limiting the generality of the foregoing, Landlord shall not be liable for injury or damage which may be sustained by the person, goods, wares, merchandise, or property of Tenant or Tenant's Associates or any other person in or about the Premises caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Premises, or from the breakage, leakage, obstruction, or other defects of the Systems and Equipment, pipes, sprinklers, wires, INC, appliances, plumbing, heating, air-conditioning, or lighting fixtures of the same, whether the damage or injury results from conditions arising upon the Premises or upon other portions of the Property, the Complex, or from other sources. Landlord shall not be liable for any damages arising from any act or omission of any other tenant or occupant of the Property or Complex. In all cases not covered by the foregoing provisions of this Article 14, Tenant shall indemnify, defend, protect, and hold Landlord harmless against (a) any and all Claims arising from any death or injury to any person or damage to any property whatsoever occurring in, on, or about the Premises or any part thereof, and (b) any and all Claims occurring in, on or about any of the Common Areas, the Property, or the Complex, when such injury or damage is caused in whole or in part by the act, negligence, fault, or omission of any duty with respect to the same by Tenant or Tenant's Associates. In all cases not covered by the foregoing provisions of this Article 14, Tenant shall further indemnify, defend, protect, and hold Landlord harmless from and against any and all Claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease, or arising from any act or negligence of Tenant or Tenant's Associates, and from and against all costs, attorneys' fees, expenses, and liabilities incurred in connection with any such Claim or any action or proceeding brought thereon. In case any action or proceeding be brought against Landlord by reason of any such Claim, Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord; provided, however, that Tenant shall not be liable in any case for damage to property or death or injury to person(s) occasioned by the active negligence or intentional misconduct of Landlord or Landlord's Associates, unless covered by insurance Tenant is required to provide.

15 DAMAGE OR DESTRUCTION

15.1 LOSS COVERED BY INSURANCE. If at any time prior to the expiration or termination of this Lease the Premises or the Property is wholly or partially damaged or destroyed by any casualty which results in a loss to Landlord that is fully covered by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to § 14.3 above), which casualty renders the Premises totally or partially inaccessible or unusable by Tenant in the ordinary conduct of Tenant's business, the parties agree that the following provisions shall modify their obligations under this Lease after such damage or destruction.

15.1.1 Repairs Which Can Be Completed Within Six (6) Months. Within thirty (30) days after Tenant's written notice to Landlord of such damage or destruction, Landlord shall provide Tenant with notice of its determination of whether the damage or destruction can be repaired within six (6) months after the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums. If all repairs to Premises or Property can, in Landlord's judgement, be completed within six (6) months following the date of the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, Landlord shall, at Landlord's expense, repair the same; and this Lease shall remain in full force and effect, except that a proportionate reduction of the Base Rent shall be allowed Tenant to the extent that the Premises shall be rendered inaccessible or unusable by Tenant and are not used by Tenant during the period of time that such portion is unusable or inaccessible and not used by Tenant.

15.1.2 Repairs Which Cannot Be Completed Within Six (6) Months. If all such repairs to the Property and Premises cannot, in Landlord's judgement, be completed within six (6) months following the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, Landlord shall notify Tenant of such determination; and in such an event, either Landlord or Tenant may, at its option, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of the occurrence of such damage or destruction. In the event that neither Landlord nor Tenant elects to terminate the Lease in accordance with the foregoing provisions, then Landlord shall, at Landlord's expense, repair such damage or destruction; and in such event, this Lease shall continue in full force and effect, except that the Base Rent shall be proportionately reduced as provided in § 15.1.1 above; provided, however, that if any such repair is not commenced by Landlord within ninety (90) days after the occurrence of such damage or destruction or is not substantially completed by Landlord within nine (9) months after the occurrence of such damage or destruction, then in either such event Tenant may, at its option, upon written notice to Landlord, elect to terminate this Lease as of the date of Landlord's receipt of such notice. Notwithstanding the foregoing, Tenant shall have no right to terminate this Lease in the situation just described if all of the following conditions are met: (x) Landlord shall have informed Tenant in its notice of determination that the repair of such damage or destruction could not be substantially completed by Landlord within nine (9) months after the occurrence of such damage or destruction; (y) Tenant shall not have elected to terminate the Lease by written notice delivered to Landlord within sixty (60) days after the occurrence of such damage or destruction; and (z) Landlord shall have commenced the work of repairing such damage or destruction.

15.2 LOSS NOT COVERED BY INSURANCE. If at any time prior to the expiration or earlier termination of this Lease the Premises or the Property is totally or partially damaged or destroyed in connection with a casualty, which loss to Landlord is not fully covered by insurance maintained by Landlord or for Landlord's benefit (or required to be maintained by Landlord pursuant to § 14.3 above); and if such damage renders the Premises inaccessible or unusable to Tenant for their intended purpose in the ordinary course of its business, Landlord may, at its option, upon written notice given to Tenant within sixty (60) days after Tenant's written notice to Landlord of the occurrence of such damage or destruction, either (a) elect to repair or to restore such damage or destruction or (b) elect to terminate this Lease. If Landlord elects to repair or restore such damage or destruction, this Lease shall continue in full force and effect, except that the Base Rent shall be proportionately reduced as provided in § 15.1.1 above. If Landlord does not elect by notice to Tenant to repair such damage, the Lease shall terminate as of the date of Tenant's receipt of Landlord's notice of election to terminate. Notwithstanding the foregoing, if all repairs to the Premises or the Building cannot, in Landlord's reasonable judgement, be completed within six (6) months following the date of the commencement of the work of repairing such damage or destruction without the payment of overtime or other premiums, then either Landlord or Tenant may at the option of either, upon written notice to the other party given within sixty (60) days after the occurrence of such damage or destruction, elect to terminate this Lease as of the date of such notice.

15.3 DESTRUCTION DURING FINAL YEAR. Notwithstanding anything to the contrary contained in §§ 15.1 and 15.2, if the Premises or the Building are wholly or partially damaged or destroyed within the final twelve (12) months of the Term of this Lease or, if an applicable renewal option has been exercised, during the last year of any renewal term, in such a way that Tenant shall be prevented from using the Premises for at least thirty (30) consecutive days as a result of such damage or destruction, then either Landlord or Tenant may, at the option of either, by written notice to the other party delivered within sixty (60) days after the occurrence of such damage or destruction, elect to terminate the Lease as of the date of such notice.

15.4 DESTRUCTION OF TENANT'S PROPERTY. Under no circumstances shall Landlord be required to repair any injury or damage to, or make any repairs to or replacements of, Tenant's Property. However, as part of Operating Expenses, Landlord shall cause to be insured the Improvements in the Premises which do not consist of Tenant's Property and shall cause such Improvements to be repaired and restored at Landlord's sole expense, except that Tenant shall pay any applicable deductible. Landlord shall have no responsibility for any contents placed or kept in or on the Premises or the Property by Tenant or Tenant's employees or invitees or any other person claiming through Tenant.

15.5 EXCLUSIVE REMEDY. Landlord and Tenant agree that their respective rights and obligations in the event of any damage or destruction of the Premises, Property, or Complex shall be governed exclusively by this Lease. Tenant, as a material inducement to Landlord entering into this Lease, irrevocably waives and releases Tenant's rights under California Civil Code §§ 1932(2), 1933(4), and 1942, as the same may be modified or replaced hereafter. No damages, compensation, setoff, allowance, or claim shall be payable by Landlord for any inconvenience, interruption, or cessation of Tenant's business or any annoyance arising from any damage to or destruction of all or any portion of the Premises, Property, or Complex.

16 EMINENT DOMAIN

16.1 CONDEMNATION. If the whole or any material part of the Premises or Property shall be taken by power of eminent domain or condemned by any competent authority for any public or quasi-public use or purpose; or if any adjacent property or street shall be so taken, condemned, reconfigured, or vacated by such authority in such manner as to require the use, reconstruction, or remodeling of any part of the Premises or Property; or if Landlord shall grant a deed or other instrument in lieu of such taking by eminent domain or condemnation (collectively "Takings"), Landlord shall have the option to terminate this Lease upon ninety (90) days' notice, provided such notice is given no later than one hundred and eighty (180) days after the date of such Taking. Tenant shall have reciprocal termination rights, on the same terms and conditions and to be exercised in the same manner as the foregoing sentence provides, if the whole or any material part of the Premises is permanently taken, or if access to the Premises is permanently materially impaired.

16.2 RENTAL APPORTIONMENT. All Rent shall be apportioned as of the date of such termination or the date of such Taking, whichever shall first occur. If any part of the Premises shall be taken, and this Lease shall not be so terminated, the Rent shall be proportionately abated.

16.3 AWARDS AND DAMAGES. Landlord shall be entitled to receive the entire award or payment in connection with any Taking, except that Tenant shall have the right to file any separate claim available to Tenant for any taking of Tenant's personal property and fixtures belonging to Tenant and removable by Tenant upon expiration of the Term, and for moving expenses, so long as such claim does not diminish the award available to Landlord and such claim is payable separately to Tenant.

16.4 TEMPORARY CONDEMNATION. If part or all of the Premises are condemned for a limited period of time ("Temporary Condemnation"), this Lease shall remain in effect. The Rent and Tenant's obligations for the part of the Premises taken shall abate during the Temporary Condemnation in proportion to the part of the Premises that Tenant is unable to use in its business operations as a result of the Temporary Condemnation. Landlord shall receive the entire award for any Temporary Condemnation.

17 ASSIGNMENT AND SUBLETTING

17.1 CONSENT REQUIRED FOR TRANSFER. Tenant agrees that it shall not assign, sublet, mortgage, hypothecate, or encumber this Lease, nor permit or allow the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each instance. The actions described in the foregoing sentence are referred to collectively herein as "Transfers" and individually as a "Transfer." If the Premises or any part thereof be sublet or occupied by anybody other than Tenant, Landlord may, after default by Tenant, collect rent from the subtenant or occupant and apply the net amount collected to the Rent herein reserved; but no Transfer, occupancy, or collection shall be deemed a waiver of the provisions hereof, the acceptance of the subtenant or occupant as tenant, or a release of Tenant from the further performance hereunder by Tenant. The consent by Landlord to a Transfer shall not relieve Tenant from obtaining the Landlord's express written consent to any further Transfer. In no event shall any permitted sublessee assign or encumber its sublease or further sublet all or any portion of its sublet space, or otherwise suffer or permit the sublet space or any part thereof to be used or occupied by others, without Landlord's prior written consent in each instance.

17.1.1 Corporate Transferor. If Tenant is a corporation, the provisions of § 17.1 shall apply to a transfer (by one or more transfers) of a majority of the stock of Tenant as if such transfer of a majority of the stock of Tenant were an assignment of this Lease.

17.2 NOTICE OF INTENT TO TRANSFER. If Tenant shall at any time or times during the Term of this Lease desire to assign this Lease or sublet all or part of the Premises, Tenant shall give notice thereof (the "Transfer Notice") to Landlord, which notice shall set forth all of the following:

(a) the proposed terms of the assignment or subletting, including (i) the effective or commencement date thereof, which shall be not less than thirty (30) nor more than one hundred eighty (180) days after the giving of such notice; (ii) in the case of a proposed assignment, the consideration therefor; and (iii) in the case of a proposed subletting, the rental rate to be paid by the proposed subtenant (including any escalation or Additional Rent payable), the term of the proposed sublease (including any renewal options), any work to be performed or paid for by Tenant, the amount of any security deposit, the cost and extent of any so-called "take-over" obligations to be assumed by Tenant on behalf of such subtenant, the amount of any rent concessions to be granted by Tenant, and any other additional monetary or so-called "business" terms or conditions;

(b) a statement setting forth in reasonable detail the identity of the proposed assignee or subtenant, the nature of its business, and its proposed use of the Premises; and

(c) current financial information with respect to the proposed assignee or subtenant, including its most recent financial report, and any other information which may reasonably be required by Landlord.

17.3 LANDLORD'S RECAPTURE RIGHT. The Transfer Notice shall be deemed an offer from Tenant to Landlord whereby Landlord (or Landlord's designee) may, at its option, terminate this Lease as to all or the affected portion of the Premises (as the case may be) as of the effective date of the proposed Transfer. Landlord may exercise its recapture right by notice to Tenant at any time within thirty (30) days after Landlord's receipt of Tenant's Transfer Notice; and during such thirty-day period Tenant shall not assign this Lease nor sublet such space to any person.

17.3.1 Date of Termination. If Landlord exercises its option to terminate this Lease as provided in § 17.3 above, this Lease shall end and expire on the date that such Transfer was to be effective or commence, as the case may be, and the Base Rent and Additional Rent shall be paid and apportioned to such date.

17.4 CONDITIONS OF CONSENT. If Landlord does not exercise its recapture right pursuant to § 17.3 above, and providing that Tenant is not in default of any of Tenant's obligations under this Lease after notice and the expiration of any applicable grace period, Landlord's consent (which must be in writing and in form reasonably satisfactory to Landlord) to the proposed assignment or sublease shall not be unreasonably withheld or delayed, provided the following conditions are met:

(a) Tenant shall have complied with the provisions of § 17.2 above, and Landlord shall not have exercised its recapture right pursuant to § 17.3 above within the time permitted therefor;

(b) In Landlord's reasonable judgement the proposed assignee or subtenant is engaged in a business which would use the Premises, or the relevant part thereof, in a manner which is in keeping with the then-current standards of the Building, is limited to the use expressly permitted under this Lease, and will not violate any negative covenant or other restriction or agreement as to use contained in any other lease of space in the Complex;

(c) The proposed assignee or subtenant is a reputable entity or person of good character and with reasonably sufficient financial worth considering the responsibility involved (and in no event of less financial standing than Tenant), is not subject to any toxic or hazardous materials cleanup order with respect to any other property, and Landlord has been furnished with reasonable proof thereof;

(d) Neither the proposed assignee or sublessee nor any person which, directly or indirectly, controls, is controlled by, or is under common control with, the proposed assignee or sublessee or any person who controls the proposed assignee or sublessee, is then an occupant of any part of the Complex, provided Landlord then has suitable space in the Complex available for leasing. For purposes of this Lease *control* shall be deemed to mean ownership of more than fifty percent (50%) of all the voting stock of a corporation or more than fifty percent (50%) of all the legal and equitable interest in any other business entity;

(e) The proposed assignee or sublessee is not a person or entity with whom Landlord is then negotiating to lease space in the Building;

(f) The form of the proposed lease shall be in form reasonably satisfactory to Landlord and shall comply with the applicable provisions of this Article 17;

(g) There shall not be more than two (2) subtenants (not including the Permitted Occupant (as defined in § 17.14 below) of the Premises);

(h) The amount of the aggregate rent to be paid by the proposed subtenant is not less than the then-current market rent per rentable square foot for comparable space in the Complex, as though the Premises were vacant, and the rental and other terms and conditions of the sublease are the same as those contained in the proposed sublease furnished to Landlord in the Transfer Notice pursuant to § 17.2 above;

(i) Tenant shall reimburse Landlord on demand for any reasonable costs that may be incurred or paid by Landlord to third persons in connection with said assignment or sublease, including costs of making investigations as to the acceptability of the proposed assignee or subtenant and legal costs incurred in connection with the granting of any requested consent; and

(j) Tenant shall not have advertised or publicized in any way the availability of the Premises without prior notice to and approval by Landlord, nor shall any advertisement state the name (as distinguished from the address) of the Complex or the rental rate;

(k) Tenant shall not have listed the Premises for subletting or assignment at a rental rate less than the greater of (i) the Base Rent and Additional Rent then payable hereunder for such space or (ii) the Base Rent and Additional Rent at which Landlord is then offering to lease other comparable space in the Building; and

(l) The sublease shall not allow the use of the Premises or any part thereof for (i) the sale of food for on or off-premises consumption or (ii) use by a foreign or domestic governmental agency.

Whether or not Landlord shall grant consent, Tenant shall pay $500.00 towards Landlord's review and processing expenses in connection with any Transfer request, as well as any reasonable legal fees incurred by Landlord, within thirty (30) days after written request by Landlord. In addition, Tenant agrees to reimburse Landlord for its reasonable attorneys' fees incurred in the review of (i) any transaction with respect to which Tenant is required to give notice under § 17.13 below and/or (ii) any other change of name, registration, corporate status or merger, acquisition, consolidation, transfer, or other matter related to Tenant's legal or corporate status requiring Landlord's attention and legal advice.

17.5 CONTINUATION OF LEASE TERMS. Each subletting pursuant to this Article 17 shall be subject to all of the covenants, agreements, terms, provisions, and conditions contained in this Lease. Notwithstanding any such subletting to any other subtenant and/or acceptance of Rent by Landlord from any subtenant, Tenant shall remain liable for the payment of the Base Rent and Additional Rent due and to become due hereunder and for the performance of all the covenants, agreements, terms, provisions, and conditions contained in this Lease on the part of Tenant to be performed and all acts and omissions of any licensee or subtenant or anyone claiming under or through any subtenant which shall be in violation of any of the obligations of this Lease; and any such violation shall be deemed to be a violation by Tenant. Tenant further agrees that notwithstanding any such subletting, no other and further subletting of the Premises by Tenant or any person or entity claiming through or under Tenant shall or will be made except upon compliance with and subject to the provisions of this Article 17. If Landlord shall decline to give its consent to any proposed assignment or sublease, or if Landlord shall exercise its recapture right under § 17.3 above, Tenant shall indemnify, defend, protect, and hold Landlord harmless against and from any and all Claims resulting from any Claims that may be made against Landlord by the proposed assignee or sublessee or by any brokers or other persons claiming a commission or similar compensation in connection with the proposed assignment or sublease.

17.6 LAPSE OF CONSENT. In the event that Landlord consents to a proposed Transfer described in the Transfer Notice and Tenant fails to execute and deliver the assignment or sublease described in the Transfer Notice to which Landlord consented within one hundred twenty (120) days after the giving of such consent, then Tenant shall again comply with all of the provisions and conditions of § 17.2 above before assigning this Lease or subletting all or part of the Premises.

17.7 TRANSFER DOCUMENTATION. With respect to each and every Transfer authorized by Landlord under the provisions of this Lease, it is further agreed as follows:

(a) no subletting shall be for a term ending later than one day prior to the Expiration Date of this Lease;

(b) no sublease shall be valid, and no subtenant shall take possession of the Premises or any part thereof, until an executed counterpart of such sublease has been delivered to Landlord;

(c) each sublease shall provide that it is subject and subordinate to this Lease and to the matters to which this Lease is or shall be subordinate, and that in the event of termination (whether by voluntary surrender or otherwise), re-entry, or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title, and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then-executory provisions of such sublease, except that Landlord shall not be (i) liable for any previous act or omission of Tenant under such sublease; (ii) subject to any offset, credit, or allowance not expressly provided in such sublease which theretofore accrued to such subtenant against Tenant or (iii) bound by any previous modification of such sublease or by any previous prepayment of more than one month's rentals; and

(d) each assignment or sublease document must provide that the assignee or subtenant expressly assumes all obligations of the Tenant under the Lease as joint and several obligations without any release of Tenant.

17.8 TRANSFER PREMIUM. If Landlord shall give its consent to any assignment of this Lease or to any sublease, Tenant shall in consideration therefor pay to Landlord, as Additional Rent, the following amounts (collectively the "Transfer Premium"):

(a) in the case of an assignment, an amount equal to seventy-five percent (75%) of all sums and other considerations paid to Tenant by the assignee for or by reason of such assignment, including sums paid for the sale of Tenant's Property, but excluding the following: (i) in the case of a sale of Tenant's Property, the then-current net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns; (ii) then-customary brokerage commissions being paid by Landlord for leasing of space in the Building or, if less, the brokerage commission paid by Tenant in connection with the assignment; (iii) reasonable legal fees and disbursements; and (iv) reasonable amounts paid by Tenant for tenant improvements constructed for the assignee; and

(b) in the case of a sublease, seventy-five percent (75%) of any rents, additional charge, or other consideration payable under the sublease to Tenant by the subtenant which is in excess of the Base Rent and Additional Rent accruing during the term of the sublease in respect of the subleased space (at the rate per square foot payable by Tenant hereunder) pursuant to the terms hereof, including sums paid for the sale or rental of Tenant's Property, but excluding the following: (i) in the case of the sale or lease of Tenant's Property, the then-current net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns; (ii) then-customary brokerage commissions being paid by Landlord for leasing of space in the Building or, if less, the brokerage commission paid by Tenant in connection with the sublease; (iii) reasonable legal fees and disbursements; and (iv) reasonable amounts paid by Tenant for tenant improvements constructed for the subtenant.

The sums payable as the Transfer Premium under this § 17.8 shall be paid to Landlord as and when payable by the subtenant or assignee to Tenant.

17.9 ASSUMPTION BY TRANSFEREE Any Transfer, whether made with Landlord's consent pursuant to § 17.1 or without Landlord's consent pursuant to § 17.1.1, shall be made only if, and shall not be effective until, the assignee or subtenant shall execute, acknowledge, and deliver to Landlord an agreement in form and substance satisfactory to Landlord under which the assignee or transferee shall assume the obligations of this Lease on the part of Tenant to be performed or observed, from and after the date of Transfer, and whereby the assignee or transferee shall agree that the provisions in § 17.1 shall, notwithstanding such Transfer, continue to be binding upon it in respect of all future Transfers. The original named Tenant covenants that, notwithstanding any Transfer, whether or not in violation of the provisions of this Lease, and notwithstanding the acceptance of Base Rent and/or Additional Rent by Landlord from an assignee, transferee, or any other party, the original named Tenant shall remain fully liable for the payment of the Base Rent and Additional Rent and for the other obligations of this Lease on the part of Tenant to be performed or observed.

17.10 NO WAIVER OR DISCHARGE. The joint and several liability of Tenant and any immediate or remote successor in interest of Tenant and the due performance of the obligations of this Lease on Tenant's part to be performed or observed shall not be discharged, released, or impaired in any respect by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

17.11 LISTING OF NAME. The listing of any name other than that of Tenant, whether on the doors of the Premises or the Building directory, or otherwise, shall not operate to vest any right or interest in this Lease or in the Premises, nor shall it be deemed to be the consent of Landlord to any Transfer of this Lease or to any sublease of the Premises or to the use or occupancy of the Premises by others.

17.12 NET PROFITS AGREEMENT. Anything contained in the foregoing provisions of this Article 17 to the contrary notwithstanding, neither Tenant nor any other person or entity having an interest in the possession, use, occupancy, or utilization of the Premises shall enter into any lease, sublease, license, concession, or other agreement for use, occupancy, or utilization of space in the Premises which provides for rental or other payment for such use, occupancy, or utilization based, in whole or in part, on the net income or profits derived by any person from the premises leased, used, occupied, or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales); and any such purported lease, sublease, license, concession, or other agreement shall be absolutely void and ineffective as a conveyance of any right or interest in the possession, use, occupancy, or utilization of any part of the Premises.

17.13 AFFILIATES. Notwithstanding anything to the contrary in this Article 17, Landlord's consent shall not be required in the event Tenant desires to assign this Lease or sublet the Premises or any portion thereof to any corporation or entity which controls, is controlled by, or is under common control with Tenant, provided and subject to the following conditions:

(a) Tenant shall not be in default of any of the terms, covenants, or conditions on Tenant's part to observe or perform hereunder;

(b) such sublet or assignment shall be subject to all of the terms, covenants, and conditions of this Lease;

(c) Tenant shall notify Landlord of such sublet or assignment in accordance with § 17.2 hereof and furnish Landlord with reasonably satisfactory evidence that such sublessee or assignee controls, is controlled by, or is under common control with Tenant; and

(d) in the event of such merger, consolidation, or transfer of substantially all of Tenant's assets, the successor to Tenant has a net worth, computed in accordance with generally-accepted accounting principles, at least equal to the greater of (i) the

net worth of Tenant immediately prior to such merger, consolidation, or transfer or (ii) the net worth of Tenant herein named on the date of this Lease; and proof satisfactory to Landlord of such net worth shall have been delivered to Landlord at least ten (10) days prior to the effective date of any such transaction.

As used herein, the terms *control* and *common control* shall be deemed to mean that the ownership of fifty percent (50%) or more of all of the issued and outstanding voting shares of such corporation, or fifty percent (50%) or more of all the legal and equitable interest in any such business entities.

17.14 PERMITTED OCCUPANTS. Landlord hereby agrees that the provisions of this Article 17 shall not apply to the shared occupancy of individual offices in the Premises with Tenant by individuals renting not more than one (1) such office (the "Permitted Occupant"), provided that the space occupied by the Permitted Occupant shall not be separately demised or contain separate entrances, demarcations, or reception areas and the occupancy by the Permitted Occupant shall be upon and subject to all of the terms and conditions of this Lease.

18 SUBORDINATION AND ATTORNMENT

18.1 SUBORDINATION OF LEASE. This Lease and all rights of Tenant hereunder are and shall be subject and subordinate in all respects to (a) all ground leases, overriding leases, and underlying leases of the Building, Property, and/or the Complex now or hereafter existing; (b) all mortgages which may now or hereafter affect the Building, Property, or Complex and any of such leases, whether or not such mortgages shall also cover other lands and/or buildings; (c) each and every advance made or hereafter to be made under such mortgages; and (d) to all renewals, modifications, replacements, and extensions of such leases and such mortgages and spreaders and consolidations of such mortgages. This § 18.1 shall be self-operative, and no further instrument of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument that Landlord, the lessor of any such lease or the holder ("Holder") of any such mortgage or any of their respective successors in interest may reasonably request to evidence such subordination. The leases to which this Lease is, at the time referred to, subject and subordinate pursuant to this Article 18 are hereinafter sometimes referred to as "Superior Leases"; the mortgages to which this Lease is, at the time referred to, subject and subordinate are hereinafter sometimes referred to as "Superior Mortgages"; and the lessor of a superior lease or its successor in interest at the time referred to is sometimes hereinafter referred to as a "Lessor." Notwithstanding the foregoing, Tenant agrees, upon written request from Landlord or any Holder or Lessor, to reorder the relative priority of the Lease with respect to any particular Superior Mortgage or Superior Lease so as to subordinate the lien of any such Superior Mortgage or Superior Lease to the Lease. Tenant agrees to execute any instrument which Landlord or any Holder or Lessor may present in order to effect such prioritization of the Lease, provided that such instrument does not modify any material term of the Lease or increase Tenant's obligations thereunder.

18.2 NOTICE AND CURE RIGHT. In the event of any action or omission of Landlord which would give Tenant the right, immediately or after lapse of a period of time, to cancel or terminate this Lease, or to claim a partial or total eviction, Tenant shall not exercise such right unless and until (i) Tenant shall have given written notice of such act or omission to the Holder of each Superior Mortgage and the Lessor of each Superior Lease whose name and address shall previously have been furnished to Tenant in writing; and (ii) unless such act or omission shall be one which is not capable of being remedied by Landlord or such mortgage Holder or Lessor within a reasonable period of time, a reasonable period for remedying such act or omission shall have elapsed following the giving of such notice and following the time when such Holder or Lessor shall have become entitled under such Superior Mortgage or Superior Lease, as the case may be, to remedy the same (which reasonable period shall in no event be less than the period to which Landlord would be entitled under this Lease or otherwise, after similar notice, to effect such remedy), provided such Holder or Lessor shall with due diligence give Tenant written notice of intention to remedy such act or omission and shall thereafter diligently and continuously prosecute such cure to completion.

18.3 ATTORNMENT. If the Lessor of a Superior Lease or the Holder of a Superior Mortgage shall succeed to the rights of Landlord under this Lease, whether through possession or foreclosure action or delivery of a new lease or deed, then at the request of such party so succeeding to Landlord's rights or other person having or acquiring title by virtue of such foreclosure or termination (herein sometimes referred to as "Successor Landlord") and upon such Successor Landlord's written agreement to accept Tenant's attornment, Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Upon such attornment this Lease shall continue in full force and effect as a direct lease between the Successor Landlord and Tenant upon all of the terms, conditions, and covenants in this Lease, except as follows:

(a) the Successor Landlord shall not be liable for any previous act or omission of Landlord under this Lease;

(b) the Successor Landlord shall not be subject to any offset (unless expressly provided for in this Lease) which shall have theretofore accrued to Tenant against Landlord;

(c) the Successor Landlord shall not be bound by any previous modification of this Lease, unless expressly provided for in this Lease, or by any previous prepayment of more than one month's Base Rent, unless such modification or prepayment shall have been expressly approved in writing by the Lessor of the Superior Lease or the Holder of the Superior Mortgage through or by reason of which the Successor Landlord shall have succeeded to the rights of Landlord under this Lease.

19 FINANCING REQUIREMENTS

19.1 LENDER-REQUESTED MODIFICATIONS. If, in connection with obtaining financing or refinancing for the Property or Complex a prospective lender shall request reasonable modifications to this Lease as a condition to such financing or refinancing, Tenant shall not withhold, delay, or unreasonably condition its consent thereto. It is agreed that, among the modifications which shall be deemed reasonable, are modifications to the subordination and attornment provisions of this Lease, modifications to the notice provisions of this Lease, modifications to the provisions of this Lease which permit the lender to cure any defaults by Landlord, and modifications to the provisions which grant additional time to cure as may be reasonably required by the lender.

19.2 FAILURE TO COMPLY. If Tenant fails or refuses to execute and deliver to Landlord, within fifteen (15) days after written notice to do so, the amendment(s) to this Lease accomplishing such reasonable modification(s), Landlord, at its sole option, shall have the right either (a) to terminate this Lease or (b) to execute the amendment for and on behalf of Tenant as its attorney-in-fact. Tenant hereby irrevocably appoints Landlord as its attorney-in-fact solely to execute any documents required to carry out the intent of § 19.1 above on behalf of Tenant.

20 DEFAULT

20.1 TENANT'S DEFAULT. Tenant's failure to perform any of its obligations under this Lease when due and in the manner required shall constitute a material breach and default ("Event of Default") of this Lease by Tenant, subject to any cure period(s) permitted or available under applicable laws or statutes. In addition, the following shall also be deemed Events of Default hereunder:

(a) Tenant's failure to take possession of the Premises for a period of sixty (60) days or longer after the Commencement Date;

(b) Tenant's abandonment or vacation of the Premises;

(c) any material misrepresentation or omission herein or in any financial statements or other materials provided by Tenant or any Guarantor in connection with negotiating or entering this Lease or in connection with any Transfer under Article 17;

(d) cancellation of any guaranty of this Lease by any Guarantor;

(e) failure by Tenant to cure within any applicable times permitted thereunder any default under any other lease for space in the Complex or any other buildings owned or managed by Landlord or its affiliates now or hereafter entered by Tenant; and any Default hereunder not cured within the times permitted for cure herein shall, at Landlord's election, constitute a default under any other such lease or leases;

(f) The levy of a writ of attachment or execution on this Lease or on any of Tenant's property;

(g) Tenant's or any Guarantor's general assignment for the benefit of creditors or arrangement, composition, extension, or adjustment with its creditors;

(h) Tenant's or any Guarantor's filing of a voluntary petition for relief, or the filing of a petition against Tenant or any Guarantor in a proceeding under the Federal Bankruptcy laws or other insolvency laws which is not withdrawn or dismissed within forty-five (45) days thereafter; or, under the provisions of any law providing for reorganization or winding up of corporations, the assumption by any court of competent jurisdiction of jurisdiction, custody, or control of Tenant or any substantial part of its property, or of any Guarantor, where such jurisdiction, custody, or control remains in force unrelinquished, unstayed, or unterminated for a period of forty five (45) days;

(i) In any proceeding or action in which Tenant is a party, the appointment of a trustee, receiver, agent, or custodian to take charge of the Premises or Tenant's Property for the purpose of enforcing a lien against the Premises or Tenant's Property; or

(j) If Tenant or any Guarantor is a partnership or consists of more than one (1) person or entity, the involvement of any partner of the partnership or other person or entity in any of the acts or events described in subsections (i) through (l) above.

20.2 LANDLORD'S REMEDIES. Upon the occurrence of an Event of Default hereunder, Landlord shall have the right, in addition to any other rights or remedies Landlord may have under Laws, at Landlord's option, without further notice or demand of any kind, to elect to do one of the following alternatives:

(i) Terminate this Lease and Tenant's right to possession of the Premises, re-enter the Premises, and take possession thereof; and Tenant shall have no further claim to the Premises or under this Lease; or

(ii) Continue this Lease in effect and collect any unpaid Rent or other charges which have theretofore accrued or which thereafter become due and payable. It is intended hereunder that Landlord have the remedy described in California Civil Code § 1951.4, which provides that a landlord may continue a lease in effect after a tenant's breach and abandonment and recover rent as it becomes due, if tenant has the right to sublease or assign, subject only to reasonable limitations.

In the event of any re-entry or retaking of possession by Landlord, Landlord shall have the right, but not the obligation, to remove all or any part of Tenant's Property from the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant.

20.2.1 No Waiver of Default. The waiver by Landlord of any Event of Default or of any other breach of any term, covenant, or condition of this Lease shall not be deemed a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant, or condition. Acceptance of Rent by Landlord subsequent to any Event of Default or breach hereof shall not be deemed a waiver of any preceding Event of Default or breach other than the failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of Rent. Landlord shall not be deemed to have waived any term, covenant, or condition of this Lease, unless Landlord gives Tenant written notice of such waiver. Tenant should not rely upon Landlord's failure or delay in enforcing any right or remedy hereunder.

20.2.2 Landlord's Right to Cure. If Tenant defaults in the performance of any of its obligations under this Lease, Landlord may (but shall not be obligated to), without waiving such default, perform the same for the account and at the expense of Tenant. Tenant shall pay Landlord all costs of such performance promptly upon receipt of a bill therefor.

20.3 DAMAGES. Should Landlord elect to terminate this Lease under the provisions of § 20.2 (i) above, Landlord may recover as damages from Tenant the following:

(a) ***Past Rent:*** The worth at the time of the award of any unpaid Rent which had been earned at the time of termination; plus

(b) ***Rent Prior to Award:*** The worth at the time of the award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

(c) ***Rent After Award:*** The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of the rental loss that Tenant proves could have been reasonably avoided; plus

(d) ***Proximately Caused Damages:*** Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, any costs or expenses (including attorneys' fees), incurred by Landlord in (i) retaking possession of the Premises; (ii) maintaining the Premises after Tenant's default; (iii) preparing the Premises for reletting to a new tenant, including any repairs or alterations; and (iv) reletting the Premises, including brokers' commissions.

"The worth at the time of the award" as used in subsections (a) and (b) above is to be computed by allowing interest at the rate of ten percent (10%) per annum or, if different, the legal rate then applicable in California. "The worth at the time of the award" as used in subsection (c) above is to be computed by discounting the amount at the discount rate of the Federal Reserve Bank situated nearest to the Premises at the time of the award plus one percent (1%).

20.4 LANDLORD'S DEFAULT. If Landlord fails to perform any covenant, condition, or agreement contained in this Lease within thirty (30) days after receipt of written notice from Tenant specifying a default and the relevant Lease provision, or if Landlord fails within that thirty-day period after notice to commence to cure any such default which cannot reasonably be cured within thirty (30) days, then, subject to § 21.1 below, Landlord shall be liable to Tenant for any damages sustained by Tenant as a result

of Landlord's breach. Tenant shall not have the right to terminate this Lease or to withhold, reduce, or offset any amount against any payments of Rent or any other charges due and payable under this Lease, except to the extent that a specific Lease provision permits such termination or withholding, reduction, or offset of Rent.

20.5 HOLDER'S RIGHT TO CURE. Tenant shall give any Holder a copy, by registered mail, of any notice of default served upon Landlord, provided that Tenant previously has been notified in writing of the address of such Holder. If Landlord fails to cure such default within the time provided in this Lease, any such Holder shall have an additional forty-five (45) days within which to cure such default by Landlord or, if such default cannot reasonably be cured within that time, such additional time as may be necessary, provided that within such forty-five (45) day period the Holder has commenced and is pursuing the remedies necessary to cure such default (including commencement of foreclosure proceedings, if necessary to effect such cure), in which event this Lease shall not be terminated while such remedies are being so pursued.

20.6 SURVIVAL OF REMEDIES. The remedies permitted under this Article 20, the parties' indemnities under §§ 14.4.3, 14.4.4, and14.4.5, and § 29.5 below shall survive the termination of this Lease.

21 LIMITATIONS ON LANDLORD'S LIABILITY

21.1 PERSONAL LIABILITY. The liability of Landlord to Tenant for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration, or any other matter relating to the Property or the Premises shall be limited to the interest of Landlord in the Property (and the rental proceeds thereof). Under no circumstances shall Landlord ever be liable for consequential or punitive damages, including damages for lost profits or for business interruption. Tenant agrees to look solely to Landlord's interest in the Property (and the rental proceeds thereof) for the recovery of any judgement against Landlord, and Landlord shall not be personally liable for any such judgement or deficiency after execution thereon. The limitations of liability contained in this Article 21 shall apply equally and inure to the benefit of Landlord's present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents, and employees, and their respective partners, heirs, successors, and assigns. Under no circumstances shall any present or future general or limited partner of Landlord (if Landlord is a partnership), or trustee or beneficiary (if Landlord or any partner of Landlord is a trust) or corporate officer, director, or shareholder (if Landlord or any partner of Landlord is a corporation or company) or member (if Landlord is a limited liability company) have any liability for the performance of Landlord's obligations under this Lease.

21.2 LIABILITY UPON TRANSFER. The term *Landlord* as used in this Lease, so far as covenants or obligations on the part of the Landlord are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to, or a lessee's interest in a ground lease or master lease of the Property. In the event of any transfer, assignment, or other conveyance or transfer of any such title or interest, Landlord herein named (and in case of subsequent transfers or conveyances, the current grantor) shall be automatically freed and relieved from and after the date of such transfer, assignment, or conveyance of all liability with respect to the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed; and, without further agreement, the transferee of such title or interest shall be deemed to have assumed and agreed to observe and perform any and all obligations of Landlord hereunder, during its ownership of the Premises. Landlord may transfer its interest in the Premises without the consent of Tenant, and such transfer or subsequent transfer shall not be deemed a violation on Landlord's part of any of the terms and conditions of this Lease.

22 ESTOPPEL CERTIFICATES

22.1 REQUEST AND DELIVERY. Within ten (10) days following any written request Landlord may make from time to time, Tenant without any charge therefor, shall execute, acknowledge, and deliver a statement certifying the following: (a) the Commencement Date of this Lease; (b) the fact that this Lease is unmodified and in full force and effect or, if there have been modifications hereto, that this Lease is in full force and effect, as modified, and stating the date and nature of such modifications; (c) the date to which the Rent and other sums payable under this Lease have been paid; (d) the fact that there are no current defaults under this Lease by either Landlord or Tenant except as specified in the statement; and (e) such other matters as may be reasonably requested by Landlord. Landlord and Tenant intend that any statement delivered pursuant to this Article 22 may be relied upon by any Holder, Lessor, beneficiary, purchaser, or prospective purchaser of the Building, the Complex, or any interest therein. Tenant's failure to deliver any such statement within the specified ten-day period shall constitute a material default hereunder, and Tenant shall indemnify, defend, protect, and hold Landlord harmless from and against any and all Claims which Landlord may sustain or incur as a result of or in connection with Tenant's failure or delay in delivering such statement.

22.2 ELECTION TO SELL BUILDING. If Landlord elects to sell the Building or to obtain loans secured by a lien on the Building, Tenant, promptly after demand, shall include with the estoppel certificate(s) provided to any prospective purchaser or lender as required under this Article 22 any financial statements of Tenant reasonably required by the purchaser or lender. The financial statements so provided shall be kept confidential as to any parties other than the purchaser or lender.

23 NOTICES

23.1 MANNER OF DELIVERY. Any notice required or permitted under this Lease shall be in writing and shall be delivered in at least one of the following ways: (a) personally or by private hand-delivery messenger service; (b) by depositing the same in the United States mail, postage prepaid, registered or certified, return receipt requested; (c) by depositing such notice, postage prepaid, with Federal Express or another nationally-recognized private overnight delivery service; or (d)by any other means permitted or required by applicable California law or statutes relevant in the context in which such notice is given. Each such notice shall be addressed to the intended recipient at such party's address set forth as follows, or at such other address as such party has theretofore specified by written notice delivered in accordance with this § 23.1:

if to Landlord:

KASHIWA FUDOSAN AMERICA, INC.
c/o Cushman & Wakefield of California, Inc.
Attn: Property Manager
400 Oyster Point Boulevard, Suite 117
South San Francisco, CA 94080

copy to:

Colliers International, Agent
Attn: Oyster Point Asset Manager
3 Park Plaza, Suite 1200
Irvine, CA 92614

if to Tenant:

SUNESIS PHARMACEUTICALS, INC.
Attn: General Manager
395 Oyster Point Boulevard, Suite 400
South San Francisco, CA 94080

23.2 REQUIRED CONTENTS. Every notice (other than the giving or withholding of consent or approval under the provisions of the Lease) given to a party shall state the section of the Lease pursuant to which the notice is given; the period of time within which the recipient of the notice must respond (or, if no response is required, a statement to that effect); and if applicable, that the failure to object to the notice within the stated time period will be deemed to be the equivalent of the recipient's approval, consent to, or satisfaction with the subject matter of the notice.

23.3 PRESUMPTION OF RECEIPT. Any notice delivered personally or by private messenger service shall be deemed delivered on the next day following the deposit of such notice at the recipient's address. Any notice delivered by Federal Express or another nationally-recognized private overnight delivery service shall be deemed delivered on the earlier of (y) the second day following deposit thereof with the carrier or (z) the delivery date shown on the carrier's record of delivery. Any notice delivered by mail in the manner specified in § 23.1 shall be deemed delivered on the earlier of (a) the third day following deposit thereof in the United States Mail or (b) the delivery date shown on the return receipt prepared in connection therewith. Refusal by Tenant or Landlord to accept either certified or registered mail shall constitute a waiver of such notice by the respective party.

24 BROKERS

24.1 TENANT'S REPRESENTATION. Tenant represents and warrants to Landlord that Tenant has dealt with no broker in connection with this Lease other than Cresa Partners and **Cushman & Wakefield of California, Inc.** Tenant shall be responsible for all foreseeable consequences of damages (including attorneys' fees and costs) resulting from any claims that may be asserted against Landlord by any other broker, finder, or other person with whom Tenant has or purportedly has dealt in connection with this Lease, and Tenant agrees to indemnify, defend, protect, and hold Landlord harmless in connection with any such Claims which may be asserted.

25 RIGHTS RESERVED TO LANDLORD

25.1 ACCESS TO PROPERTY. All of the Property except the inside surfaces of all walls, windows, and doors bounding the Premises (including exterior Building walls, core corridor walls and doors, and any core corridor entrance) and any space in or adjacent to the Premises used for shafts, stacks, pipes, conduits, fan rooms, ducts, electric, or other utilities, sinks or other Building facilities, and the use thereof, as well as access thereto through the Premises for the purpose of operation, maintenance, decoration, and repair, are reserved to Landlord. Tenant shall permit Landlord to install, use, replace, and maintain pipes, ducts, and conduits within the demising walls, bearing columns, and ceilings of the Premises.

25.2 CONTROL OF PROPERTY. Except to the extent expressly limited herein, Landlord reserves full rights to control the Property (which rights may be exercised without subjecting Landlord to claims for constructive eviction, abatement of Rent, damages, or other claims of any kind), including more particularly the following rights:

(a) **Name, Address, Access.** To change the name or street address of the Property; install and maintain signs on the exterior and interior of the Property; retain at all times, and use in appropriate instances, keys to all doors within and into the Premises; grant to any Person the right to conduct any business or render any service at the Property, whether or not it is the same or similar to the use permitted Tenant by this Lease; and have access for Landlord and other tenants of the Property to any mail chutes located on the Premises according to the rules of the United States Postal Service.

(b) **Entry into Premises.** To enter the Premises at reasonable hours for reasonable purposes, including inspection and supplying cleaning service or other services to be provided Tenant hereunder, to show the Premises to current and prospective lenders, ground lessors, insurers, and prospective purchasers, tenants and brokers, at reasonable hours; and if Tenant shall abandon the Premises at any time, or shall vacate the same during the last three (3) months of the Term, to decorate, remodel, repair, or alter the Premises.

(c) **Safety Measures.** To limit or prevent access to the Property, shut down elevator service, activate elevator emergency controls, or otherwise take such action or preventative measures deemed necessary by Landlord for the safety of tenants or other occupants of the Property or the protection of the Property and other property located thereon or therein, in case of fire, invasion, insurrection, riot, civil disorder, public excitement or other dangerous condition, or threat thereof.

(d) **Improvements.** To decorate and to make alterations, additions and improvements, structural or otherwise, in or to the Property or any part thereof, and any adjacent building, structure, parking facility, land, street or alley (including changes and reductions in corridors, lobbies, parking facilities and other public areas and the installation of kiosks, planters, sculptures, displays, escalators, mezzanines, and other structures, facilities, amenities and features therein, and changes for the purpose of connection with or entrance into or use of the Property in conjunction with any adjoining or adjacent building or buildings, now existing or hereafter constructed). In connection with such matters, or with any other repairs, maintenance, improvements or alterations, in or about the Property, Landlord may erect scaffolding and other structures reasonably required, and during such operations may enter upon the Premises and take into and upon or through the Premises, all materials required to make such repairs, maintenance, alterations or improvements, and may close public entry ways, other public areas, restrooms, stairways or corridors.

25.3 LANDLORD'S RIGHT TO MAINTAIN. Except as expressly otherwise provided in this Lease, Landlord shall have no liability to Tenant by reason of any inconvenience, annoyance, interruption, or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted to make by this Lease, by any other lease or agreement affecting the Property, or by Law, in or to any portion of the Property, Complex, or the Premises, including the Systems and Equipment and appurtenances of the Property or the Premises, provided that Landlord shall use due diligence with respect thereto and shall perform such work, except in case of emergency, at times reasonably convenient to Tenant and otherwise in such manner as will not materially diminish Tenant's beneficial enjoyment of the Premises for their intended use.

25.4 REASONABLE NOTICE. In connection with entering the Premises to exercise any of the foregoing rights, Landlord shall: (a) provide reasonable advance written or oral notice to Tenant's on-site manager or other appropriate person (except in emergencies, or for routine cleaning or other routine matters), and (b) take reasonable steps to avoid any unreasonable interference with Tenant's business.

26 BUILDING PLANNING

26.1 RELOCATION RIGHT. In the event Landlord requires the Premises for use in conjunction with another suite or for other reasons connected with Landlord's planning program for the Building, upon notifying Tenant in writing, Landlord shall have the right to move Tenant to other space in the Building or in the Complex, provided such space is not more than ten percent (10%) larger than the Premises. If Landlord elects to move Tenant to such other space, Landlord shall pay for (a) all direct, out-of-pocket, reasonable expenses of Tenant in moving from the Premises to the new space and (b) the cost of improving the new space so that the level of improvements in the new space is comparable to the level of improvements in the Premises. All the terms and conditions of the original Lease shall remain in full force and effect, except that (i) a revised Exhibit B shall become a part of this Lease and shall reflect the location of the new space; and (ii) Tenant agrees to execute promptly upon notice from Landlord an amendment to this Lease amending the Table and corresponding sections of the Lease in order to reflect all correct data for the new space.

27 HOLDING OVER

27.1 HOLDOVER. Unless Landlord expressly agrees otherwise in writing, Tenant shall pay Landlord two hundred percent (200%) of the amount of Rent then applicable prorated on per diem basis for each day Tenant shall retain possession of the Premises or any part thereof after expiration of the Term or earlier termination of this Lease, together with all damages sustained by Landlord on account thereof. In the case of any such holdover, the Lease shall be converted to a month-to-month tenancy which either party may terminate upon written notice of not less than thirty (30) days to the other. Tenant shall remain bound to comply with all provisions of this Lease until Tenant vacates the Premises and shall be subject to the provisions of § 11.1 above.

27.2 PERMISSIVE MONTH-TO-MONTH TENANCY. Notwithstanding the foregoing to the contrary, at any time before or after expiration or earlier termination of the Term of the Lease, Landlord may serve notice advising Tenant of the amount of Rent and other terms required, should Tenant desire to enter a month-to-month tenancy. If Tenant shall hold over more than one full calendar month after such notice, Tenant shall thereafter be deemed a month-to-month tenant, on the terms and provisions of this Lease then in effect, as modified by Landlord's notice, except that Tenant shall not be entitled to any renewal or expansion rights contained in this Lease or any amendments hereto.

28 PARKING

28.1 AVAILABLE PARKING. Subject to the terms and conditions contained in the balance of this Article 28, Landlord agrees to make available to Tenant during the Term of this Lease and any renewal term up to a maximum of fifty-four (54) parking spaces on a non-exclusive basis in the area(s) designated by Landlord for parking in the Building's parking lots and/or facility (the "Parking Facility"). Said parking spaces shall be in locations designated by Landlord, and parking shall be on a first-come-first-served, unassigned, nonreserved basis. Landlord reserves the right to designate different locations or different parking areas for Tenant's use without any liability to Tenant and Tenant agrees that any change shall not give rise to any claims or offset against Landlord hereunder. Tenant shall abide by any and all parking regulations and rules established from time to time by Landlord or Landlord's parking operator. Landlord reserves the right in its sole and absolute discretion to restrict or prohibit the use of the Parking Facility for any vehicles other than passenger automobiles, such as full-sized vans or trucks. Tenant shall not permit any vehicles belonging to Tenant or Tenant's employees, agents, customers, contractors, or invitees to be loaded, unloaded, or parked in areas other than those designated by Landlord for such activities. A failure to comply with the foregoing provisions shall afford Landlord the right without notice to remove any vehicles involved and to charge the cost to Tenant, which cost shall be immediately due and payable upon demand by Landlord.

28.2 USE AT TENANT'S OWN RISK. Landlord shall have no obligation to monitor the use of the Parking Facility. Tenant's and its employees' use of the Parking Facility shall be at the sole risk of Tenant and its employees. Unless caused by the willful harmful act of Landlord, Landlord shall have no responsibility or liability for any injury or damage to any person or property by or as a result of the use of the Parking Facility (or substitute parking) by Tenant and its employees, whether by theft, collision, criminal activity, or otherwise, and Tenant hereby assumes, for itself and its employees, all risks associated with any such occurrences in or about the Parking Facility.

29 MISCELLANEOUS PROVISIONS.

29.1 GENERAL DEFINITIONS. The definitions which follow shall apply generally to the provisions of this Lease.

(a) The term ***business days*** means Monday through Friday inclusive, excluding Holidays as defined in § 8.1.1 above. Throughout this Lease, wherever *days* is used the term shall refer to calendar days. Wherever the term *business days* is used the term shall refer to business days as defined hereunder.

(b) The term ***mortgage*** shall include any mortgage or deed of trust, and the term ***mortgagee*** shall include a trustee.

(c) The terms ***include***, ***including***, and ***such as*** shall each be construed as if followed by the phrase "without limitation." The rule of *eiusdem generis* shall not be applicable to limit a general statement following or referrable to an enumeration of specific matters to matters similar to the matters specifically mentioned.

(d) The term ***obligations under this Lease*** and words of like import shall mean the covenants to pay Rent and Additional Rent under this Lease and all of the other covenants and conditions contained in this Lease. Any provision in this Lease that one party or the other or both shall do or not do or shall cause or permit or not cause or permit a particular act, condition, or circumstance shall be deemed to mean that such party so covenants or both parties so covenant, as the case may be.

(e) The term ***Tenant's obligations hereunder*** and words of like import and the term ***Landlord's obligations hereunder*** and words of like import shall mean the obligations under this Lease which are to be performed or observed by Tenant, or by Landlord, as the case may be. Reference to ***performance*** of either party's obligations under this Lease shall be construed as "performance and observance."

(f) Reference to Tenant being or not being ***in default hereunder*** or words like import shall mean that Tenant is in default in the performance of one or more of Tenant's obligations hereunder, or that Tenant is not in default in the performance of any of Tenant's obligations hereunder, or that a condition of the character described in § 20.1 above has occurred and continues or has not occurred or does not continue, as the case may be.

(g) References to Landlord as having ***no liability to Tenant*** or being ***without liability to Tenant*** shall mean that Tenant is not entitled to terminate this Lease or to claim actual or constructive eviction, partial or total, or to receive any credit, allowance, setoff, abatement, or diminution of Rent, or to be relieved in any manner of any of its other obligations hereunder, or to be compensated for loss or injury suffered or to enforce any other kind of liability whatsoever against Landlord under or with respect to this Lease or with respect to Tenant's use or occupancy of the Premises.

(h) The term ***requirements of insurance bodies*** and words of like import shall mean rules, regulations, orders, and other requirements of the California Board of Fire Underwriters and/or the California Fire Insurance Rating Organization and/or any other similar body performing the same or similar functions and having jurisdiction or cognizance of the Property and/or the Premises.

(i) The term ***repair*** shall be deemed to include restoration and replacement as may be necessary to achieve and/or maintain good working order and condition.

(j) Reference to ***termination of this Lease*** includes expiration or earlier termination of the Term of this Lease or cancellation of this Lease pursuant to any of the provisions of this Lease or to Law. Upon a termination of this Lease, the Term and estate granted by this Lease shall end at noon of the date of termination as if such date were the date of expiration of the Term of this Lease, and neither party shall have any further obligation or liability to the other after such termination, except as shall be expressly provided for in this Lease and except for any such obligation as by its nature or under the circumstances can only be, or by the provisions of this Lease may be, performed after such termination; and in any event, unless expressly provided to the contrary in this Lease, any liability for a payment or obligation which shall have accrued to or with respect to any period ending at the time of termination shall survive the termination of this Lease.

(k) The term ***in full force and effect*** when herein used in reference to this Lease as a condition to the existence or exercise of a right on the part of Tenant shall be construed in each instance as including the further condition that at the time in question no default on the part of Tenant exists, and no event has occurred which has continued to exist for such period of time (after the notice, if any, required by this Lease), as would entitle Landlord to terminate this Lease or to dispossess Tenant.

(l) The term ***Tenant*** shall mean Tenant herein named or any assignee, heir, distributee, executor, administrator, legal representative, or other successor in interest (immediate or remote) of Tenant herein named, while such Tenant or such assignee or other successor in interest, as the case may be, is in possession of the Premises as owner of the Tenant's estate and interest granted by this Lease and also, if Tenant is not a single individual or a corporation, all of the persons, firms, and corporations then comprising Tenant; and their liability hereunder shall be joint and several.

29.2 LIGHT AND AIR. No diminution of light, air or view by any structure which may hereafter be erected (whether or not by Landlord) shall entitle Tenant to any reduction of Rent under this Lease, result in any liability of Landlord to Tenant, or in any other way affect this Lease.

29.3 WAIVER OF TERMS. If either Landlord or Tenant waives the performance of any term, covenant, or condition contained in this Lease, such waiver shall not be deemed to be a waiver of the term, covenant, or condition itself or a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein. Furthermore, the acceptance of Rent by Landlord shall not constitute a waiver of any preceding breach by Tenant of any term, covenant, or condition of this Lease, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepts such Rent. Failure by Landlord to enforce any of the terms, covenants, or conditions of this Lease for any length of time shall not be deemed to waive or to decrease the right of Landlord to insist thereafter upon strict performance by Tenant. Waiver by Landlord of any term, covenant, or condition contained in this Lease may only be made by a written document signed by Landlord.

29.4 FAILURE TO DELIVER STATEMENTS. Landlord's failure during the Term of this Lease to prepare and deliver any of the Statements, estimates, notices, or bills contemplated or required under this Lease, or Landlord's failure to make a demand, shall not in any way cause Landlord to forfeit or surrender its rights to collect any of the foregoing items of Rent which may have become due during the Term of this Lease.

29.5 ATTORNEY'S FEES. In the event that any action or proceeding (including arbitration) is brought to enforce or interpret any term, covenant, or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such action or proceeding (whether after trial or upon appeal) shall be entitled to recover from the party not prevailing its expenses therein, including reasonable attorneys' fees and all allowable costs as fixed by the court.

29.6 JURY TRIAL. Tenant and Landlord each hereby waive their respective rights to a trial by jury under applicable Laws in the event of any litigation or dispute between Landlord and Tenant arising out of or in connection with this Lease and the parties' performance thereunder.

29.7 MERGER. Notwithstanding the acquisition (if same should occur) by the same party of the title and interests of both Landlord and Tenant under this Lease, there shall never be a merger of the estates of Landlord and Tenant under this Lease, but instead the separate estates, rights, duties, and obligations of Landlord and Tenant, as existing hereunder, shall remain unextinguished and continue, separately, in full force and effect until this Lease expires or otherwise terminates in accordance with the express provisions herein contained.

29.8 NO MERGER ON VOLUNTARY SURRENDER. A voluntary or other surrender of this Lease by Tenant or the mutual cancellation of this Lease shall not work a merger and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all such subleases or subtenancies.

29.9 CONSENT. Notwithstanding anything contained in this Lease to the contrary, Tenant shall have no claim and hereby waives the right to any claim against Landlord for money damages by reason of any refusal, withholding, or delaying by Landlord of any consent, approval, statement, or satisfaction; and in such event, Tenant's only remedies therefor shall be an action for specific performance, injunction, or declaratory judgement to enforce any right to such consent, approval, statement, or satisfaction.

29.10 COUNTERPARTS. This Lease may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

29.11 FINANCIAL STATEMENTS. In order to induce Landlord to enter into this Lease, Tenant agrees that it shall promptly furnish Landlord, from time to time, upon Landlord's written request, with financial statements reflecting Tenant's current financial condition. Tenant represents and warrants that all financial statements, records, and information furnished by Tenant to Landlord in connection with this Lease are and shall be true, correct, and complete in all respects.

29.12 GENDER AND NUMBER. Words used in neuter gender include the feminine and masculine, where applicable, and words used in the singular or plural shall include the opposite number if appropriate.

29.13 JOINT AND SEVERAL OBLIGATION. If more than one person executes this Lease as Tenant, each of them is jointly and severally liable for the keeping, observing, and performing of all of the terms, covenants, conditions, provisions, and agreements of this Lease to be kept, observed, and performed by Tenant. The term *Tenant* as used in this Lease shall mean and include each of such signatories jointly and severally. The act of or notice from, or notice or refund to, or the signature of, any one or more of such signatories with respect to the tenancy or this Lease, including any renewal, extension, expiration, termination, or modification of this Lease, shall be binding upon each and all of the persons executing this Lease as Tenant with the same force and effect as if each and all of them had so acted or so given or received such notice or refund or so signed.

29.14 HEADINGS AND SECTION NUMBERS. The headings and titles of the articles and sections of this Lease are used for convenience only and shall have no effect upon the construction or interpretation of this Lease. Wherever a reference is made in this Lease to a particular article or section, such reference shall be deemed to include all subsections following such section reference, unless the contrary is expressly provided in connection with such reference. All references in this Lease to numbered articles, numbered sections, and lettered exhibits are references to articles and sections of this Lease and exhibits annexed to (and thereby made part of) this Lease, as the case may be, unless expressly otherwise designated in the context.

29.15 TIME. Time is of the essence of this Lease and all of its provisions.

29.16 APPLICABLE LAW. This Lease shall in all respects be governed by and interpreted in accordance with the laws of the State of California without reference to its conflicts of law principles. If suit is brought by a party to this Lease, the parties agree that jurisdiction of such action shall be vested exclusively in the state courts of the State of California, County of San Mateo, or in the United States District Court for the Northern District of California, and with its execution an delivery of this Lease Tenant waives any defense it might otherwise have against the jurisdiction of such courts.

29.17 SEVERABILITY. If any provision of this Lease or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

29.18 SIGNS. Tenant shall not place or permit to be placed in or upon the Premises where visible from outside the Premises or any part of the Building, any signs, notices, drapes, shutters, blinds or window coatings, or displays of any type without the prior written consent of Landlord. Landlord shall consent to the location at the cost of Tenant of a building standard sign on or near the entrance of the Premises and shall include Tenant in the Building and Complex directories located in the Building. Landlord reserves the right in Landlord's sole discretion to place and locate on the roof and exterior of the Building and Complex and in any area of the Building and the Complex not leased to Tenant, such signs, notices, displays and similar items as Landlord deems appropriate in the proper operation of the Building and the Complex.

29.19 EXECUTION BY LANDLORD. The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or option for, the Premises. This document becomes effective and binding only upon execution and delivery hereof by Tenant and by Landlord. No act or omission of any employee or agent of Landlord or of Landlord's broker shall alter, change or modify any of the provisions hereof.

29.20 USE OF NAME. Tenant shall not use the name of the Building or Complex for any purpose other than the address of the business to be conducted by Tenant in the Premises. Tenant shall not use any picture of the Building or Complex in its advertising, stationery or in any other manner so as to imply that the entire Building or Complex is leased by Tenant. Landlord expressly reserves the right at any time to change the name or street address of the Building and/or Complex without in any manner being liable to Tenant therefor.

29.21 NONRECORDABILITY OF LEASE. Tenant agrees that in no event shall this Lease or a memorandum hereof be recorded without Landlord's express prior written consent, which consent Landlord may withhold in its sole discretion.

29.22 CONSTRUCTION. All provisions hereof, whether covenants or conditions, shall be deemed to be both covenants and conditions. The definitions contained in this Lease, shall be used to interpret the Lease. All rights and remedies of Landlord and Tenant shall, except as otherwise expressly provided, be cumulative and non-exclusive of any other remedy at law or in equity.

29.23 FORCE MAJEURE DELAYS. This Lease and the obligations of Tenant hereunder shall not be affected or impaired because Landlord is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of force majeure, strike, labor troubles, acts of God, acts of government, unavailability of materials or labor, or any other cause beyond the reasonable control of Landlord (collectively "Force Majeure Delays").

29.24 AUTHORITY. If Tenant is a corporation, each individual executing this Lease on behalf of Tenant represents and warrants that Tenant is qualified to do business in California and that he is duly authorized to execute and deliver this Lease on behalf of Tenant and shall deliver appropriate certification to that effect if requested. If Tenant is a limited liability company, partnership, joint venture, or other unincorporated association, each individual executing this Lease on behalf of Tenant represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of Tenant and that this Lease is binding on Tenant. Furthermore, Tenant agrees that the execution of any written consent hereunder, or any written modification or termination of this Lease, by any general partner or member of Tenant or any other authorized agent of Tenant, shall be binding on Tenant.

29.25 NONDISCLOSURE. Tenant agrees that it shall not disclose any of the matters set forth in this Lease or disseminate or distribute any information concerning the terms, covenants, or conditions thereof to any person, firm, or entity, other than a prospective assignee or subtenant of the Premises, without first obtaining the express written approval of Landlord; provided, however, that Tenant may disclose the contents of this Lease to any director, officer, or employee of Tenant, to Tenant's lawyers, accountants, or other third party consultants or professionals, to any lenders, investors, or others to whom Tenant provides financial statements, or in response to any legally effective demand for disclosure pursuant to court order or from any other properly constituted legal authority.

29.26 QUIET ENJOYMENT. So long as Tenant is not in default under this Lease, Tenant shall have quiet enjoyment of the Premises for the Term, subject to all the terms and conditions of this Lease and all liens and encumbrances prior to this Lease.

29.27 ACCESS INSPECTION DISCLOSURE. Pursuant to California Civil Code § 1938, Landlord hereby notifies Tenant that, as of the date of this Lease, the Premises have not undergone inspection by a "Certified Access Specialist" to determine whether the Premises meet all applicable construction-related accessibility standards under California Civil Code § 55.53, and the Premises have not been determined to meet all applicable construction-related accessibility standards pursuant to Civil Code § 55.53.

29.28 EXHIBITS AND ATTACHMENTS. All exhibits and attachments referred to in the body of this Lease are deemed attached hereto and incorporated herein by reference. The parties have attached the following exhibits to the Lease prior to execution:

Exhibit A Site Plan
Exhibit B Floor Plan of Premises
Exhibit C Rules and Regulations
Exhibit D Athletic Facility Use Agreement
Exhibit E Commencement Date Agreement

29.29 LANDLORD'S REPRESENTATIVE. Tenant acknowledges and agrees that, in executing this Lease, TAK Development, Inc., a California corporation, is acting solely in its capacity as Landlord's authorized attorney-in-fact. TAK Development, Inc. is not acquiring or assuming any legal liability or obligation to any other party executing this Lease, and any claim or demand of any such other party arising under or with respect to this Lease shall be made and enforced solely against Landlord.

29.30 ENTIRE AGREEMENT. This Lease, together with its exhibits, contains all the agreements of the parties hereto and supersedes any previous negotiations. There have been no representations made by the Landlord or understandings made between the parties other than those set forth in this Lease and its exhibits. This Lease may not be modified except by a written instrument duly executed by the parties hereto.

In witness whereof, the parties have executed this Lease as of the date first above written.

Landlord:

KASHIWA FUDOSAN AMERICA, INC., a California corporation

By: **TAK Development, Inc.,** a California corporation

Its: Attorney-in-Fact

By: /s/ Yujin Yumaai
Yujin Yumaai, Vice President

Tenant:

SUNESIS PHARMACEUTICALS, INC., a Delaware corporation

By: /s/ Eric Bjerkholt
Eric Bjerkholt
[name typed]

Its: EVP Corp Dev and Finance, CFO

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Exhibit 10.49

SECOND AMENDMENT TO SUBLEASE

THIS SECOND AMENDMENT TO SUBLEASE (this "Amendment") is made and entered into as of the 16th day of January, 2014 (the "Amendment Date") by and -between MCKESSON SPECIALTY CARE DISTRIBUTION CORPORATION, a Delaware corporation ("Sublandlord") and SUNESIS PHARMACEUTICALS, INC., a Delaware Corporation ("Subtenant").

RECITALS

A. Sublandlord and Subtenant entered into that certain Commercial Sublease Agreement dated December 22, 2006, as amended by that certain First Amendment to Sublease dated January 14, 2013 (as amended, the "Sublease"), for certain premises located at 395 Oyster Point Boulevard, South San Francisco, California containing approximately 15,378 rentable square feet (the "Premises'').

B. The current Term of the Prime Lease is scheduled to expire on February 28, 2014.

C. The current Sublease Term is scheduled to expire on January 31, 2014.

D. Subtenant and Prime Landlord have or will be entering into a lease agreement whereby Subtenant will lease the Premises directly from Prime Landlord for a term commencing March 1, 2014 (the "Direct Lease").

E. Sublandlord and Subtenant desire to extend the Sublease Term by one (1) month so that no lapse will occur between the Sublease Term and the term of the Direct Lease.

NOW, THEREFORE, in consideration of the Mutual covenants and conditions contained herein and of other good and valuable consideration, the, receipt and sufficiency of which, are hereby acknowledged, Sublandlord and Subtenant agree as follows:

1. Recitals; Defined Terms. The parties acknowledge that the Recitals are an integral part of this Amendment and are incorporated herein by this reference. Defined terms used herein but not defined shall have the same meaning ascribed to such term as in the Sublease.

2. Sublease Term. The Sublease Term is hereby extended for a period of one (1) month (the-"Extended Period") so that it shall expire on February 28, 2014. All terms and conditions or the Sublease, including the amount and payment of rent, shall continue to be in effect for the Extended Period.

3. Brokers. Except for CBRE, Inc. representing Sublandlord, Sublandlord and Subtenant each represents and warrants to the other that neither party has engaged or had any conversations or negotiations with any broker, finder or other third party concerning the matters set forth in his Amendment who would be entitled to any commission or fee based on the execution of this Amendment. Sublandlord and Subtenant each hereby indemnifies the other

against and from any claims for any brokerage commissions and all costs, expenses and liabilities in connection therewith, including, without limitation, reasonable attorneys' fees and expenses, for any breach of the foregoing. The foregoing indemnification shall survive the termination of the Sublease for any reason.

4. Miscellaneous. This Amendment shall be incorporated into and made a part of the Sublease, and all provisions of the Sublease not expressly modified or amended hereby shall remain in full force and effect. As amended hereby, the Sublease is hereby ratified and confirmed. This Amendment to Sublease shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Amendment may be executed in multiple counterparts, each of which shall constitute an original and all of which when taken together shall constitute one and the same instrument. Furthermore, the parties agree that this Amendment may be delivered by facsimile or electronic transmission and that delivery of an executed copy hereof by facsimile or electronic transmission shall constitute delivery or an original and shall be binding upon the delivering party.

[Executions on following page]

IN WITNESS WHEREOF, the parties have executed this Amendment as of the date and year first above written by their duly authorized representatives.

SUBLANDLORD:

MCKESSON SPECIALTY CARE DISTRIBUTION CORPORATION, a Delaware corporation

By: /s/ Jennifer Smith Webster
Jennifer Smith Webster, Vice President and Treasurer

SUBTENANT:

SUNESIS PHARMACEUTICALS, INC.,
a Delaware corporation

By: /s/ Eric Bjerkholt
Name: Eric Bjerkholt
Title: EVP & CFO

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements on Form S-3 (Nos. 333-166366, 333-168191, 333-187854 and 333-194166) and related Prospectuses, and the Registration Statements on Form S-8 (Nos. 333-128647, 333-132679, 333-138758, 333-145404, 333-150834, 333-160528, 333-174732, 333-180101 and 333-187234) pertaining to the 1998 Stock Plan, 2001 Stock Plan, 2005 Equity Incentive Award Plan, Amended and Restated 2006 Employment Commencement Incentive Plan, Employee Stock Purchase Plan, 2011 Equity Incentive Plan and 2011 Employee Stock Purchase Plan of Sunesis Pharmaceuticals, Inc., of our reports dated March 6, 2014, with respect to the consolidated financial statements of Sunesis Pharmaceuticals, Inc., and the effectiveness of internal control over financial reporting of Sunesis Pharmaceuticals, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2013.

/s/ Ernst & Young LLP

Redwood City, California
March 6, 2014

Exhibit 31.1

CERTIFICATION

I, Daniel N. Swisher, Jr., certify that:

1. I have reviewed this Annual Report on Form 10-K of Sunesis Pharmaceuticals, Inc.;

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 officer 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) and 15d-15(f)) for the registrant and 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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 officer 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 the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 6, 2014

/S/ DANIEL N. SWISHER, JR.

Daniel N. Swisher, Jr.

President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION

I, Eric H. Bjerkholt, certify that:

1. I have reviewed this Annual Report on Form 10-K of Sunesis Pharmaceuticals, Inc.;

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 officer 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) and 15d-15(f)) for the registrant and 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 (the registrant's fourth fiscal quarter in the case of an annual report) 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 officer 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 the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 6, 2014

/S/ ERIC H. BJERKHOLT

Eric H. Bjerkholt

Executive Vice President, Corporate Development and Finance, Chief Financial Officer

Exhibit 32.1

Certification of Chief Executive Officer and Chief Financial Officer Pursuant to
18 U.S.C. Section 1350, as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to the requirement set forth in Rule 13a-14(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and Section 1350 of Chapter 63 of Title 18 of the United States Code (18 U.S.C. §1350), Daniel N. Swisher, Jr., Chief Executive Officer of Sunesis Pharmaceuticals, Inc. (the "Company"), and Eric H. Bjerkholt, Chief Financial Officer of the Company, each hereby certifies that, to the best of his knowledge:

1. The Company's Annual Report on Form 10-K for the period ended December 31, 2013, to which this Certification is attached as Exhibit 32.1 (the "Annual Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Exchange Act, and

2. The information contained in the Annual Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

In Witness Whereof, the undersigned have set their hands hereto as of the 6th day of March, 2014.

/S/ DANIEL N. SWISHER, JR.	/S/ ERIC H. BJERKHOLT
Daniel N. Swisher, Jr.	Eric H. Bjerkholt
Chief Executive Officer	*Chief Financial Officer*

This certification accompanies the Form 10-K to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Sunesis Pharmaceuticals, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-K), irrespective of any general incorporation language contained in such filing.