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

FORM 10-Q

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

For the quarterly period ended June 30, 2006

or

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

For the transition period from _____ to _____.

Commission File Number: 000-21088

VICAL INCORPORATED

(Exact name of registrant as specified in its charter)

Delaware	**93-0948554**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
10390 Pacific Center Court **San Diego, California**	**92121**
(Address of principal executive offices)	**(Zip code)**

(858) 646-1100
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Large Accelerated filer ☐ Accelerated Filer ☒ Non-accelerated filer ☐

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

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

Total shares of common stock outstanding at July 31, 2006: 29,492,126

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VICAL INCORPORATED

FORM 10-Q

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

VICAL INCORPORATED
BALANCE SHEETS
(In thousands, except par value data)
(Unaudited)

	June 30, 2006	December 31, 2005
ASSETS		
Current assets:		
Cash and cash equivalents	$ 8,431	$ 5,710
Marketable securities, available-for-sale	48,815	58,337
Restricted marketable securities	2,439	2,439
Receivables and other	11,046	5,778
Total current assets	70,731	72,264
Property and equipment, net	14,229	15,170
Intangible assets, net	5,188	5,481
Other assets	1,090	1,615
Total assets	$ 91,238	$ 94,530
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable and accrued expenses	$ 3,325	$ 4,687
Current portion of equipment financing obligations	3,081	4,093
Total current liabilities	6,406	8,780
Long-term liabilities:		
Equipment financing obligations, net of current portion	1,930	3,426
Deferred rent	2,153	2,018
Total long-term liabilities	4,083	5,444
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, $0.01 par value, 5,000 shares authorized, none issued and outstanding	—	—
Common stock, $0.01 par value, 80,000 shares authorized, 29,491 and 28,261 shares issued and outstanding at June 30, 2006, and December 31, 2005, respectively	295	283
Additional paid-in capital	251,191	242,991
Accumulated deficit	(170,591)	(162,874)
Accumulated other comprehensive loss	(146)	(94)
Total stockholders' equity	80,749	80,306
Total liabilities and stockholders' equity	$ 91,238	$ 94,530

See accompanying notes to unaudited financial statements

VICAL INCORPORATED
STATEMENTS OF OPERATIONS
(In thousands, except per share data)
(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2006	2005	2006	2005
Revenues:				
Contract and grant revenue	$ 7,100	$ 487	$12,679	$ 2,940
License and royalty revenue	156	4,320	192	4,551
Total revenues	7,256	4,807	12,871	7,491
Operating expenses:				
Research and development	4,171	4,756	8,815	9,229
Manufacturing and production	4,499	3,353	8,051	7,265
General and administrative	2,406	1,923	4,848	4,038
Total operating expenses	11,076	10,032	21,714	20,532
Loss from operations	(3,820)	(5,225)	(8,843)	(13,041)
Other income (expense):				
Investment income	650	382	1,293	766
Interest expense	(74)	(139)	(167)	(285)
Net loss	$ (3,244)	$ (4,982)	$ (7,717)	$(12,560)
Basic and diluted net loss per share	$ (0.11)	$ (0.21)	$ (0.27)	$ (0.53)
Weighted average shares used in computing basic and diluted net loss per share	28,817	23,517	28,555	23,513

See accompanying notes to unaudited financial statements

VICAL INCORPORATED
STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Six months ended June 30,	
	2006	2005
Cash flows from operating activities:		
Net loss	$ (7,717)	$(12,560)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,660	1,868
Write-off of abandoned patents	42	97
Compensation expense related to stock options and awards	943	203
Changes in operating assets and liabilities:		
Receivables and other	(5,268)	(1,230)
Other assets	525	498
Accounts payable, accrued expenses and other liabilities	(1,362)	(242)
Deferred revenue	—	(531)
Deferred rent	135	2
Net cash used in operating activities	(11,042)	(11,895)
Cash flows from investing activities:		
Maturities of marketable securities – including restricted	95,421	31,867
Purchases of marketable securities – including restricted	(85,951)	(21,955)
Purchases of property and equipment	(352)	(997)
Patent expenditures	(116)	(259)
Net cash provided by investing activities	9,002	8,656
Cash flows from financing activities:		
Proceeds from issuance of common stock	7,361	40
Payment of withholding taxes for net settlement of restricted stock units	(92)	—
Principal payments under equipment financing obligations	(2,508)	(2,368)
Proceeds from equipment financing arrangements	—	517
Net cash provided by (used in) financing activities	4,761	(1,811)
Net increase (decrease) in cash and cash equivalents	2,721	(5,050)
Cash and cash equivalents at beginning of period	5,710	17,666
Cash and cash equivalents at end of period	$ 8,431	$ 12,616
Supplemental information:		
Interest paid	$ 167	$ 284

See accompanying notes to unaudited financial statements

VICAL INCORPORATED
NOTES TO FINANCIAL STATEMENTS
June 30, 2006
(Unaudited)

1. GENERAL

Vical Incorporated, or the Company, was incorporated in April 1987 and has devoted substantially all of its resources since that time to its research and development programs. The Company researches and develops biopharmaceutical products based on its patented DNA delivery technologies for the prevention and treatment of serious or life-threatening diseases.

The unaudited financial statements at June 30, 2006, and for the three and six months ended June 30, 2006 and 2005, have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission, or SEC, and with accounting principles generally accepted in the U.S. applicable to interim financial statements. These unaudited financial statements have been prepared on the same basis as the audited financial statements and include all adjustments, consisting of only normal recurring accruals, which in the opinion of management are necessary to present fairly the Company's financial position as of the interim date and results of operations for the interim periods presented. Interim results are not necessarily indicative of results for a full year or future periods. The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. These unaudited financial statements should be read in conjunction with the Company's audited financial statements for the year ended December 31, 2005, included in its Form 10-K filed with the SEC.

Issuance of Common Stock

In June 2006, the Company received approximately $6.9 million in proceeds from the sale of approximately 1.1 million shares of its common stock at $6.50 per share in a private placement to AnGes MG, Inc., or AnGes, pursuant to a research and development agreement and a stock purchase agreement as described in Note 4.

Cash, Cash Equivalents and Marketable Securities

Cash and cash equivalents consist of cash and highly liquid securities with original maturities at the date of acquisition of ninety days or less. Investments with an original maturity of more than ninety days are considered marketable securities and have been classified by management as available-for-sale. Such investments are carried at fair value, with unrealized gains and losses included as a separate component of stockholders' equity.

Restricted Marketable Securities

The Company is required to maintain a letter of credit securing an amount equal to twelve months of the current monthly installment of base rent for the term of its primary facilities lease, which ends in August 2017. At June 30, 2006, and December 31, 2005, restricted marketable securities of $2.4 million were pledged as collateral for this letter of credit.

Revenue Recognition

The Company recognizes revenue in accordance with SEC Staff Accounting Bulletin Topic 13, "Revenue Recognition" and Emerging Issues Task Force No. 00-21, or EITF No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured.

C*ontract Manufacturing Revenue.* The Company's contract manufacturing arrangements typically require the delivery of multiple lots of clinical vaccines. In accordance with EITF No. 00-21, the Company analyzes its multiple element arrangements to determine whether the elements can be separated and accounted for individually as separate units of accounting. The evaluation is performed at the inception of the arrangement. The delivered item(s) is considered a separate unit of accounting if all of the following criteria are met: (1) the delivered item(s) has value to the customer on a standalone basis; (2) there is objective and reliable evidence of the fair value of the undelivered item(s); and (3) if the arrangement includes a general right of return relative to the delivered item, delivery or performance of the undelivered item(s) is considered probable and substantially in our control. If the delivered item does not have standalone value or the Company

does not have objective or reliable evidence of the fair value of the undelivered component, the amount of revenue allocable to the delivered item is deferred.

License and Royalty Revenue. The Company's license and royalty revenues are generated through agreements with strategic partners. Nonrefundable, up-front license fees and milestone payments with standalone value that are not dependent on any future performance by the Company under the agreements are recognized as revenue upon the earlier of when payments are received or collection is assured, but are deferred if the Company has continuing performance obligations. If the Company has continuing involvement through contractual obligations under such agreements, such up-front fees are deferred and recognized over the period for which the Company continues to have a performance obligation, unless all of the following criteria exist: (1) the delivered item(s) have standalone value to the customer, (2) there is objective and reliable evidence of the fair value of the undelivered item(s), and (3) there is no general right to return the delivered item(s).

The Company recognizes royalty revenues from licensed products when earned in accordance with the terms of the license agreements. Net sales figures used for calculating royalties include deductions for costs of returns, cash discounts, and freight and warehousing, which may vary over the course of the license agreements. Payments received related to milestones are recognized as revenue upon the achievement of the milestones as specified in the underlying agreements, which represent the culmination of the earnings process.

Government Research Grant Revenue. The Company recognizes revenues from federal government research grants during the period in which the related expenditures are incurred.

Net Loss Per Share

Basic and diluted net loss per share has been computed using the weighted-average number of shares of common stock outstanding during the period. The weighted average number of shares used to compute diluted loss per share excludes any assumed exercise of stock options, and the assumed issuance of common stock under restricted stock units, or RSUs, as the effect would be antidilutive. Common stock equivalents of 0.4 million and 0.1 million for the three months ended June 30, 2006 and 2005, respectively, were excluded from the calculation because of their antidilutive effect. Common stock equivalents of 0.4 million and 0.3 million for the six months ended June 30, 2006 and 2005, respectively, were excluded from the calculation because of their antidilutive effect.

Recent Accounting Pronouncements

In February 2006, the Financial Accounting Standards Board, or FASB, issued Statement of Financial Accounting Standards, or SFAS, No. 155, "Accounting for Certain Hybrid Financial Instruments." SFAS No. 155 permits fair value remeasurement for any hybrid financial instrument that contains an embedded derivative that otherwise would require bifurcation. As of June 30, 2006, the Company did not have any hybrid financial instruments subject to the fair value election under SFAS No. 155. The Company is required to adopt SFAS No. 155 effective at the beginning of 2007.

Change in Accounting Method for Share-Based Compensation

Effective January 1, 2006, the Company adopted SFAS No. 123R, "Share-Based Payment", as interpreted by SEC Staff Accounting Bulletin No. 107 and began recording compensation expense associated with stock options and other forms of equity compensation based on their fair value.

2. STOCK-BASED COMPENSATION

On June 30, 2006, the Company had two stock-based compensation plans, which are described below. Total stock-based compensation expense of $0.4 million and $0.1 million was recognized for the three months ended June 30, 2006 and 2005, respectively. Total stock-based compensation expense of $0.9 million and $0.2 million was recognized for the six months ended June 30, 2006 and 2005, respectively. Total stock-based compensation cost was allocated to research and development, manufacturing and production and general and administrative expense as follows (in thousands):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Research and development	$ 157	$ 49	$ 338	$ 81
Manufacturing and production	63	—	137	—
General and administrative	217	71	468	122
Total stock-based compensation expense	$ 437	$ 120	$ 943	$ 203
Cash received from options exercised	$ 408	$ 5	$ 500	$ 40

Stock Incentive Plan

The Company has a stock incentive plan, under which 6,700,000 shares of common stock, subject to adjustment as provided in the plan, are reserved for issuance to employees, non-employee directors and consultants of the Company. The plan provides for the grant of incentive and nonstatutory stock options and the direct award or sale of shares, including restricted stock. The exercise price of stock options must equal at least the fair market value of the underlying common stock on the date of grant. The maximum term of options granted under the plan is ten years. Except for annual grants to non-employee directors which vest at the next annual meeting, options generally vest 25 percent on the first anniversary of the date of grant, with the balance vesting quarterly over the remaining three years. The plan also limits the number of options that may be granted to any plan participant in a single calendar year to 300,000 shares.

The Company has granted restricted stock units, or RSUs, to executive officers, other executives, and employees under the stock incentive plan. RSUs granted prior to 2005 vest quarterly over two years. RSUs granted during and after 2005 vest 25% on the first anniversary from the grant date, with the remaining portion vesting quarterly over the next three years. Once an RSU is vested the participant has the right to acquire common stock underlying the grant at par value. The participants are not entitled to vote or receive dividends on any shares of common stock covered by RSUs prior to the acquisition of such shares. Participants are also not entitled to sell or transfer any RSUs. Granted but unvested RSUs are forfeited at termination of employment.

Directors' Stock Option Plan

The Company also has a directors' stock option plan that provides for the issuance to non-employee directors of up to 210,000 shares of common stock, of which options for 202,500 shares have been granted through June 30, 2006. There will be no future grants under the directors' stock option plan as the plan expired in December of 2004. The maximum term of options granted under the plan is ten years. Grants to non-employee directors typically vest at the next annual meeting.

Change in Accounting Method for Share-Based Compensation

Effective January 1, 2006, the Company adopted SFAS No. 123R, "Share-Based Payment", as interpreted by SEC Staff Accounting Bulletin No. 107 and began recording compensation expense associated with stock options and other forms of equity compensation based on their fair value. Prior to January 1, 2006, the Company accounted for stock options according to the provisions of Accounting Principles Board, or APB, Opinion No. 25, "Accounting for Stock Issued to Employees", and related interpretations, and therefore no related compensation expense was recorded for awards granted with no intrinsic value. The Company adopted the modified prospective transition method provided for under SFAS No. 123R, and consequently has not retroactively adjusted results from prior periods. Under this transition method, stock-based compensation now includes 1) amortization related to the remaining unvested portion on January 1, 2006, of all stock option awards granted prior to January 1, 2006, over the remaining requisite service period based on the grant date fair value estimated in accordance with the original provisions of SFAS No. 123, "Accounting for Stock Based Compensation", adjusted for estimated forfeitures; and 2) amortization related to all stock option awards granted subsequent to January 1, 2006, based on the grant date fair value estimated in accordance with the provisions of SFAS No. 123R. In addition, the Company records expense related to RSUs granted based on the fair value of those awards on the grant date. The fair value related to the RSUs is amortized to expense over the vesting term of those awards. The stock-based compensation expense includes an estimate for forfeitures and is recognized over the expected term of the award using the straight-line method. The expected forfeiture rate of all equity based compensation is based on observed historical patterns of the Company's employees and is estimated to be 11.2% annually for the three and six months ended June 30, 2006.

The fair value of each option award is estimated on the date of grant using the Black-Scholes-Merton valuation model using the assumptions noted in the following table. The expected life of options is based on observed historical exercise patterns. The expected volatility of stock options is based upon the historical volatility of the Company's stock. The risk-free interest rate is based on the implied yield on a U.S. Treasury zero-coupon issue with a remaining term equal to the expected term of the option. The dividend yield reflects that the Company has not paid any cash dividends since inception and does not intend to pay any cash dividends in the foreseeable future.

Assumptions:	Three Months Ended June 30, 2006	Six Months Ended June 30, 2006
Assumed risk-free interest rate	4.96%	4.53%
Assumed volatility	69%	68%
Expected option life	3 to 6 years	3 to 6 years
Expected dividend yield	—	—

As a result of the adoption of SFAS No. 123R, the Company's loss from operations and net loss for the three and six months ended June 30, 2006, was $0.4 million, or $0.01 per share, and $0.8 million, or $0.03 per share, respectively, higher than under the Company's previous accounting method for stock-based compensation. However, there was no impact on the Company's cash flows for the six months ended June 30, 2006, as a result of the adoption of SFAS No. 123R.

A summary of option activity under the plans as of June 30, 2006, and changes during the six months then ended is presented below:

	Shares	Weighted Average Exercise Price
Outstanding at December 31, 2005	3,790,474	$ 9.09
Granted	409,350	$ 5.10
Exercised	(125,718)	$ 3.98
Forfeited	(208,758)	$ 7.75
Outstanding at June 30, 2006	3,865,348	$ 8.90
Exercisable at June 30, 2006	2,783,909	$ 10.39

The weighted average remaining contractual term of options outstanding and options exercisable at June 30, 2006, was 6.26 years and 5.35 years, respectively. The aggregate intrinsic value of options outstanding and options exercisable at June 30, 2006, was $2.0 million and $1.3 million, respectively. As of June 30, 2006, the total unrecognized compensation cost related to unvested options was $2.2 million, which is expected to be recognized over a weighted-average period of 1.46 years. The weighted average grant-date fair values of options granted during the six months ended June 30, 2006 and 2005, were $2.78 per share and $3.31 per share, respectively. The total intrinsic value of options exercised during the six months ended June 30, 2006 and 2005, was $0.3 million and $18,000, respectively.

A summary of the outstanding RSUs as of June 30, 2006, and changes during the six months then ended is presented below:

	Shares	Weighted Average Grant-Date Fair Value per Share
Unvested at December 31, 2005	160,812	$ 5.15
Granted	59,610	$ 4.54
Vested	(58,719)	$ 5.31
Cancelled	(890)	$ 4.54
Unvested at June 30, 2006	160,813	$ 4.88

The aggregate grant-date fair value of RSUs granted during the six months ended June 30, 2006 and 2005, was $0.3 million and $0.8 million, respectively. As of June 30, 2006, the total unrecognized compensation cost related to unvested RSUs was $0.8 million, which is expected to be recognized over a weighted average period of 2.0 years. The total fair value

of shares subject to RSUs vested during the six months ended June 30, 2006 and 2005, was $0.3 million and $0.1 million, respectively.

Pro Forma Information under SFAS 123 for Periods Prior to the Adoption of SFAS 123R

For stock options granted prior to the adoption of SFAS No. 123R, if stock-based compensation expense for the Company's various stock option plans had been determined based upon estimated fair values at the grant dates in accordance with SFAS No. 123, the Company's pro forma net loss and basic and diluted net loss per share would have been as follows (in thousands, except per share data and assumptions):

	Three Months Ended June 30, 2005	Six Months Ended June 30, 2005
Net loss, as reported	$ (4,982)	$ (12,560)
Add stock-based compensation expense included in reported net loss	120	203
Less stock-based compensation expense determined under fair value based method for all awards	(692)	(1,250)
Pro forma net loss	$ (5,554)	$ (13,607)
Basic and diluted net loss per share, as reported	$ (0.21)	$ (0.53)
Basic and diluted pro forma net loss per share	$ (0.24)	$ (0.58)
Weighted average fair value of stock options	$ 2.49	$ 3.31
Assumptions:		
Assumed risk-free interest rate	3.84%	3.96%
Assumed volatility	78%	79%
Expected option life	4 years	4 years
Dividend yields	—	—

3. COMPREHENSIVE LOSS

Comprehensive loss consists of net loss and other comprehensive income or loss. Accumulated other comprehensive loss represents net unrealized losses on marketable securities. For the three months ended June 30, 2006 and 2005, other comprehensive income (loss) was ($0.1) million and $0.1 million, respectively, and total comprehensive loss was $3.4 million and $4.9 million, respectively. For the six months ended June 30, 2006 and 2005, other comprehensive income (loss) was ($53,000) and $26,000, respectively, and total comprehensive loss was $7.8 million and $12.5 million, respectively.

4. RECENT CONTRACT, GRANT AND LICENSE ACTIVITIES

NIH Vaccine Research Center

In 2003, the Company entered into a subcontract agreement with the Dale and Betty Bumpers Vaccine Research Center, or VRC, of the National Institutes of Health, or NIH, to manufacture bulk DNA vaccines for the VRC. The subcontract agreement expired in July 2006, however, it includes provisions that allow the Company to deliver previously ordered bulk DNA after the agreement's expiration. The subcontract agreement is issued and managed on behalf of the VRC by SAIC-Frederick, Inc. under the umbrella of a federally funded contract with the NIH. The Company recognized revenue under this subcontract agreement of $6.4 million and $10.2 million for the three and six months ended June 30, 2006, respectively. No revenue was recognized under this subcontract agreement in 2005.

AnGes Research and Development Agreement

On May 25, 2006, the Company entered into a research and development agreement, or R&D Agreement, with AnGes, whereby AnGes agreed to fund the Company's Allovectin-7® Phase 3 trial. The funding will consist of purchases by AnGes of up to $10.85 million of restricted shares of the Company's common stock and additional non-refundable cash payments by AnGes of up to $11.75 million. If the project costs exceed the aggregate amount of $22.6 million, the Company and AnGes have agreed to share the excess project costs up to certain limits. All of the funding provided by AnGes, including

those funds used to purchase the Company's common stock, must be used for actual and documented costs related to the conduct of the Allovectin-7® Phase 3 trial.

Under the R&D Agreement, the Company has granted to AnGes exclusive marketing rights for Allovectin-7® in specified countries in Asia and AnGes has agreed to pursue regulatory approvals in those countries, subject to receipt by the Company of regulatory approval in the United States. The Company has also granted AnGes certain royalty-bearing licenses to its technology and know-how. AnGes is obligated to pay royalties to the Company on sales of Allovectin-7® in specified countries in Asia. AnGes also obtained the right to receive royalties from the Company on any commercial sales of Allovectin-7® in the United States. AnGes may also purchase supplies of Allovectin-7® from the Company for resale by AnGes in Asia.

The first installment of $6.9 million was received by the Company upon execution of the R&D Agreement and the stock purchase agreement. In accordance with the terms of the stock purchase agreement AnGes was issued 1,061,538 shares of the Company's restricted common stock at $6.50 per share in exchange for the first installment. The price per share for any future purchase of the Company's common stock under the stock purchase agreement is based on the volume weighted average price per share for the 30 trading days ending on the second trading day immediately preceding the date of such future purchase.

Under the stock purchase agreement, the Company has also granted AnGes limited rights to require the Company to register the shares of common stock under the Securities Act upon the occurence of certain events. AnGes has also agreed to certain transfer restrictions with respect to the shares of common stock sold under the stock purchase agreement and has further agreed to certain standstill provisions whereby AnGes will refrain from acquiring or taking certain other actions with respect to the Company's common stock, subject to certain exceptions.

Due to the restrictions on AnGes' ability to sell the shares of the Company's common stock, the fair value of the Company's common stock sold to AnGes may be less than $6.50 per share. At June 30, 2006, the Company is in the process of determining the amount of the discount, if any. Upon determination of the discount additional paid-in capital will be reduced and deferred revenue, a current liability, will be increased by the same amount.

5. OTHER BALANCE SHEET ACCOUNTS

Receivables and other current assets consisted of the following (in thousands):

	June 30, 2006	December 31, 2005
Accounts receivable	$ 7,261	$ 502
Other current assets	3,785	5,276
	$11,046	$ 5,778

Accounts payable and accrued expenses consisted of the following (in thousands):

	June 30, 2006	December 31, 2005
Employee compensation	$1,522	$ 2,115
Accounts payable	333	298
Accrued royalty	—	500
Other accrued liabilities	1,470	1,774
	$3,325	$ 4,687

6. COMMITMENTS AND CONTINGENCIES

If the Company fails to satisfy its contractual obligations to deliver the DNA vaccines ordered by the VRC in the manner required by the Company's manufacturing agreements with the VRC, the applicable Federal Acquisition Regulations allow the VRC to cancel the agreements in whole or in part, and the Company may be required to perform corrective actions, including but not limited to delivering to the VRC any uncompleted or partially completed work, and/or any government property in its possession, and/or paying a third-party supplier selected by the VRC to complete any uncompleted work. The performance of these corrective actions could have a material adverse impact on the Company's financial results in the period or periods affected. Government agencies may fail to perform their responsibilities under these agreements and they may terminate the agreements.

In 2003, the Wisconsin Alumni Research Foundation, or WARF, filed a complaint against the Company in the U.S. District Court for the Western District of Wisconsin, seeking a declaratory judgment regarding the meaning of certain payment provisions in a license agreement the Company entered into with the WARF in 1991. The Company counterclaimed, likewise seeking a declaratory judgment as to the correct interpretation of the payment provisions of the agreement. In May 2004, the Company settled this matter for $1.5 million, all of which had been paid as of June 30, 2006. Pursuant to the settlement and an amendment to the license agreement with the WARF, the lawsuit was dismissed.

European Patent 1026253, covering a significant portion of the Company's core DNA delivery technology, was granted in September 2004. European Patent 0465529 was granted to Vical in 1998, and was subsequently opposed by seven companies under European patent procedures. This '529 patent was revoked on formal grounds in October 2001 under an initial ruling by the Opposition Division of the European Patent Office, or EPO. In April 2002, the Company filed an appeal seeking to overturn this initial ruling. The claims that were allowed in the newly granted '253 patent cover substantially the same scope as those claims in the '529 patent which were under appeal. For this reason, the Company withdrew from the '529 appeal upon grant of the '253 patent in September 2004. In June 2005, the '253 patent was opposed by eight parties. However, the Company may also use additional issued patents and patent applications that are pending in Europe to protect its core DNA delivery technology.

In addition, the Company's core DNA delivery technology is covered by a Japanese patent that was published in January 2002 and thereafter revoked by the examining panel at the Japanese Patent Office, or JPO, on formal and substantive grounds. The Company filed a rebuttal response to the revocation. Based on the Company's arguments and supporting evidence in that response, the JPO reinstated the patent in July 2003. Four Trial for Invalidation, or TFI, requests were filed in the JPO by two companies in 2003. The Company filed responses to the TFI requests in a timely manner. The JPO combined two of the four TFI requests into a single action, and in December 2004, ruled in the Company's favor on the combined TFI requests by accepting the corrected claims and finding the demand for the trials groundless. The Company is awaiting further action by the JPO on the other two TFI requests.

A European patent was issued in 2003 covering a range of applications of the Company's core DNA delivery technology, including cationic lipid-formulated, gene-based immunotherapeutics such as the Company's clinical-stage Allovectin-7® treatment for melanoma, cationic lipid-formulated DNA vaccines such as the Company's investigational anthrax vaccine, and similar pharmaceutical products under development by others. This patent was opposed by two companies. The Company responded to the oppositions in a timely manner, and defended the patent at an oral hearing in March 2006 at the EPO. The patent was maintained in amended form. The Company plans to appeal certain rulings, but the formal reasoning of the rulings leading to the amendments has yet to be provided by the EPO.

A European patent was issued to the Company in 2003 with broad claims related to gene-based, extra-tumoral delivery of any cytokines for the treatment of cancer. Delivery can be either free from or formulated with transfection-facilitating materials such as cationic lipids or polymers. Cytokines are proteins such as interleukins and interferons which regulate specific cell functions, and typically are used to stimulate an immune response against cancer cells. Three companies opposed this patent. The Company responded to the oppositions in a timely manner, and will continue to vigorously defend its position in upcoming oral hearings.

The Company prosecutes its intellectual property estate vigorously to obtain the broadest valid scope for its patents. Due to the uncertainty of the ultimate outcome of these matters, the impact on future operating results or our financial condition is not subject to reasonable estimates.

In the ordinary course of business, the Company may become a party to lawsuits involving various matters. The Company is unaware of any such lawsuits presently pending against it which, individually or in the aggregate, is deemed to be material to the financial condition or results of operations of the Company.

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

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding our business, our financial position, the research and development of biopharmaceutical products based on our patented DNA delivery technologies, the future funding of our research and development efforts, and other statements describing our goals, expectations, intentions or beliefs. Such statements reflect our current views and assumptions and are subject to risks and uncertainties, particularly those inherent in the process of developing and commercializing biopharmaceutical products based on our patented DNA delivery technologies. Actual results could differ materially from

those herein. Factors that could cause or contribute to such differences include, but are not limited to, those discussed in our Annual Report on Form 10-K for the year ended December 31, 2005, and our other filings with the Securities and Exchange Commission, and those identified in Part II, Item 1A entitled "Risk Factors" beginning on page 22 of this Report. As a result, you are cautioned not to rely on these forward-looking statements. We disclaim any duty to update any forward-looking statement to reflect events or circumstances that occur after the date on which such statement is made.

Overview

We research and develop biopharmaceutical products based on our patented DNA delivery technologies for the prevention and treatment of serious or life-threatening diseases. In addition, we have gained access to enhancing technologies through licensing and collaborative agreements. We believe the following areas of research offer the greatest potential for our product development efforts:

- Vaccines for use in high-risk populations for infectious disease targets for which there are significant U.S. needs;
- Vaccines for general pediatric or adult populations for infectious disease applications; and
- Cancer vaccines or immunotherapies which complement our existing programs and core expertise.

In 2005, the first product utilizing our patented DNA delivery technology received approval for use in animals. Our licensee, Aqua Health Ltd. of Canada, or Aqua Health, an affiliate of Novartis Animal Health, received approval from the Canadian Food Inspection Agency to sell a DNA vaccine to protect farm-raised salmon against an infectious disease. We believe this approval is an important step in the validation of our DNA delivery technology. We plan to continue leveraging our patented technologies through licensing and collaborations. We also plan to use our expertise, infrastructure, and financial strength to explore both in-licensing and acquisition opportunities.

We have licensed our technologies to:

- Merck & Co., Inc., or Merck;
- Two divisions of the Sanofi-Aventis Group, or Sanofi-Aventis:
  - *Sanofi Pasteur; and*
  - *Centelion SAS, or Centelion, a wholly-owned subsidiary of Aventis Pharmaceuticals S.A.;*
- Merial Ltd., or Merial, a joint venture between Merck and Sanofi-Aventis;
- Corautus Genetics Inc., or Corautus;
- Aqua Health;
- Invitrogen Corporation, or Invitrogen;
- AnGes MG, Inc., or AnGes;
- Stanford University, or Stanford;
- Harvard University, or Harvard;
- Massachusetts Institute of Technology, or MIT; and
- Yale University, or Yale.

We have also licensed complementary technologies from:

- Wisconsin Alumni Research Foundation , or WARF;
- The University of Michigan;
- Inovio Biomedical Corporation, or Inovio (formerly Genetronics Biomedical Corporation);
- CytRx Corporation, or CytRx;
- The National Institutes of Health, or NIH; and
- The U.S. Centers for Disease Control and Prevention, or CDC.

Product Development

We, together with our licensees and collaborators, are currently developing a number of DNA-based vaccines and therapeutics for the prevention or treatment of infectious diseases, cardiovascular diseases and cancer. Our current independent development focus is on our novel pDNA vaccines for cytomegalovirus, or CMV, and avian influenza, as well as our cancer immunotherapeutic, IL-2/electroporation, or EP. The table below summarizes our independent, collaborative and out-licensed product development programs.

Product Area	Project Target and Indication(s)	Development Status[1]	Development Rights
Infectious Disease			
Infectious disease vaccine	Cytomegalovirus	Phase 2	Vical
”	*Bacillus anthracis* (anthrax)	Phase 1	Vical
”	Influenza	Preclinical	Vical
”	Ebola virus	Phase 1	Vical/NIH
”	West Nile virus	Phase 1	Vical/NIH
”	HIV/EP	Research	Vical/NIH
”	SARS coronavirus	Phase 1	NIH
”	HIV	Phase 2	NIH
”	HIV	Phase 1	Merck
”	Hepatitis B virus	Research	Merck
”	Hepatitis C virus	Research	Merck
Cardiovascular			
Angiogenic growth factor	HGF, peripheral arterial disease	Phase 3	AnGes/Daiichi Pharma
”	HGF, ischemic heart disease	Phase 1	AnGes/Daiichi Pharma
”	VEGF-2, peripheral arterial disease	Phase 1	Corautus
”	FGF-1, peripheral arterial disease	Phase 2	Centelion
Cancer			
”	Allovectin-7® for metastatic melanoma	Initiating Phase 3	Vical/AnGes
Immunotherapeutic	IL-2/EP for metastatic melanoma	Phase 1	Vical
Tumor-associated antigen therapeutic vaccines	HER-2 and CEA for breast, colorectal, ovarian or non-small cell lung cancer	Phase 1	Merck
”	Unspecified cancer[2]	Research	Merck
Veterinary			
Preventive infectious disease vaccine(s)	Infectious Hematopoietic Necrosis Virus	Marketed in Canada	Aqua Health
”	Various undisclosed[2]	Research-Clinical	Merial
Protective cancer vaccine	Melanoma in dogs	Conditional U.S. license expected in 2006	Merial

[1] “Research” indicates exploration and/or evaluation of a potential product candidate in a nonclinical laboratory setting. “Preclinical” indicates that a specific product candidate in a nonclinical setting has shown functional activity that is relevant to a targeted medical need, and is undergoing toxicology testing in preparation for filing an Investigational New Drug, or IND, application. “Phase 1” clinical trials include the first use of an investigational new drug in humans and are conducted in a small group of patients or normal volunteer subjects (20-80) to evaluate safety, determine a safe dosage range, and identify side effects, and, if possible, gain early evidence on effectiveness. “Phase 2” clinical trials are typically well controlled and conducted in a larger group of subjects (no more than several hundred) to evaluate effectiveness of an investigational drug for a defined patient population, and to determine common short-term side effects and risks associated with the drug. “Phase 3” clinical trials are conducted in an even larger group of subjects (several hundred to thousands) to evaluate the overall benefit-risk relationship of the investigational drug and to provide an adequate basis for product labeling. For veterinary products, “Clinical” indicates testing in the target species.

[2] Pursuant to our collaborative agreements, we are bound by confidentiality obligations to our collaborators that prevent us from publicly disclosing these targets and indications. Additionally, some project targets and indications cannot currently be disclosed because they have not yet been selected by our collaborators.

See the section entitled “Business” in our Annual Report on Form 10-K for the year ended December 31, 2005, for a detailed discussion of our independent, collaborative and out-licensed product development programs.

Recent Events

The following events have recently occurred with respect to our technologies and applications:

- In June 2006, we announced that the National Institute of Allergy and Infectious Diseases, or NIAID, after reviewing recently reported preclinical data from our avian influenza flu DNA vaccine program, gave us accelerated access to $2.6 million in funding for further development of the vaccine under a grant awarded in September 2005. The funds will be used to complete preclinical development of the vaccine and file an Investigational New Drug Application with the FDA, which would allow initiation of a Phase 1 safety trial in human volunteers.
- In June 2006, we presented data on preclinical research at the American Society of Gene Therapy annual meeting, including enhancement of antibody protection using electroporation in our CMV and anthrax programs and evidence from our anthrax program that a DNA vaccine may induce memory immune responses.
- In June 2006, we announced that in a Phase 1 clinical trial, a West Nile virus vaccine candidate administered using our proprietary DNA delivery technology was safe and well tolerated, and produced neutralizing antibody West Nile virus specific responses in all 11 healthy volunteers who returned for follow-up testing after completing the three-dose vaccination schedule. The Phase 1, open-label clinical trial was sponsored by the NIAID and conducted at the NIH Clinical Center.
- In May 2006, we entered into a R&D Agreement with AnGes to provide for further development of our cancer immunotherapeutic, Allovectin-7®. Under the agreement, AnGes will provide funding of up to $22.6 million through a scheduled series of cash payments and equity investments, including an initial equity investment of $6.9 million. The payments will be used to fund the Phase 3 pivotal trial of Allovectin-7® to be conducted by us in the United States. We will retain exclusive marketing rights for Allovectin-7® in the United States and the rest of the world outside of specified Asian countries, for which AnGes received exclusive rights.
- In May 2006, we announced that our lead three-component influenza flu DNA vaccine candidate provided 100% protection in mice and ferrets against lethal challenges with a highly virulent H5N1 avian influenza virus in studies conducted by Richard J. Webby, Ph.D., at St. Jude Children's Research Hospital. Additionally, in these and earlier studies in mice, simplified versions of our vaccine candidate using only two of the three components provided high levels of protection against multiple human flu strains and against the H5N1 avian flu strain.
- In April 2006, our licensee Corautus announced that it had terminated patient enrollment in its Phase 2b coronary artery disease angiogenesis trial involving pDNA-based delivery of VEGF-2 based on the recommendation of an independent data monitoring committee. In July 2006, Corautus announced its plans to lock the Phase 2b database and conduct analysis of the data for efficacy endpoints and safety information.

Research, Development and Manufacturing Programs

To date, we have not received revenues from the sale of our independently developed pharmaceutical products. We earn revenue by performing services under research and development contracts, grants, and manufacturing contracts, and from licensing access to our proprietary technologies. Since our inception, we estimate that we have received approximately $131.5 million in revenue under these types of agreements.

Revenues by source were as follows (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Source				
NIH contracts	$ 6.4	$ —	$ 10.2	$ 1.1
CMV grants	—	0.1	1.0	1.2
Other contracts and grants	0.7	0.4	1.5	0.6
Total contract and grant revenues	7.1	0.5	12.7	2.9
Merck license	—	3.0	—	3.0
AnGes license	—	1.0	—	1.0
Other royalties and licenses	0.2	0.3	0.2	0.6
Total royalty and license revenues	0.2	4.3	0.2	4.6
Total revenues	$ 7.3	$ 4.8	$ 12.9	$ 7.5

Research, development, manufacturing and production costs by major program, as well as other costs were as follows (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2006	2005	2006	2005
Program				
Allovectin-7®	$ 2.0	$ 1.2	$ 3.2	$ 2.3
CMV	1.5	2.3	3.3	4.5
Anthrax	0.1	0.4	0.5	0.9
IL-2/EP	0.4	0.6	1.0	1.4
Other research, development, manufacturing and production	4.7	3.6	8.9	7.4
Total research, development, manufacturing and production	$ 8.7	$ 8.1	$ 16.9	$ 16.5

Since our inception, we estimate that we have spent approximately $261 million on research, development, manufacturing and production. Our current independent development focus is on novel DNA vaccines for CMV and influenza and our cancer immunotherapeutic, IL-2/EP. We are in the early stages of clinical development of our vaccine candidate for CMV and our IL-2/EP program for solid tumors with an initial indication for metastatic melanoma, and in preclinical development of our influenza vaccine candidate, and these programs will require significant additional costs to advance through development to commercialization. From inception, we have spent approximately $29 million on our CMV program, and approximately $6 million on our IL-2/EP program.

We are currently performing preclinical testing of vaccine candidates for human and avian influenza under separate grants. We have several other product candidates in the research stage. It can take many years from the initial decision to screen product candidates, perform preclinical and safety studies, and perform clinical trials leading up to possible approval of a product by the FDA or comparable foreign agencies. The outcome of the research is unknown until each stage of the testing is completed, up through and including the registration clinical trials. Accordingly, we are unable to predict which potential product candidates we may seek to develop, the time and cost to complete development, and ultimately whether we will have a product approved by the FDA or comparable foreign agencies.

We have also spent approximately $65 million from inception on our Allovectin-7® program. We have successfully completed a Special Protocol Assessment, or SPA, with the FDA for a Phase 3 trial of Allovectin-7® that would be needed to support submission of a Biologics License Application, or BLA. Under our R&D Agreement with AnGes, we expect to complete the Phase 3 trial without significant additional independent expenditures. However, preparations for the BLA filing and commercialization, if pursued, are expected to require significant additional funds.

In addition, we are in the early stages of clinical development of an anthrax vaccine candidate, however, due to the lack of additional government funding, we do not intend to pursue further development of our anthrax vaccine candidate at this time except for the ongoing non-clinical development supported by a Small Business Innovation Research, or SBIR, grant.

As a result, we expect to incur substantial operating losses for at least the next several years, due primarily to the expansion of our research and development programs, the cost of preclinical studies and clinical trials, spending for outside services, costs related to maintaining our intellectual property portfolio, costs due to increased contract manufacturing activities, increased costs of our facilities, and possible advancement toward commercialization activities.

Critical Accounting Policies and Estimates

The preparation of financial statements in accordance with accounting principles generally accepted in the United States requires that management make a number of assumptions and estimates that affect the reported amounts of assets, liabilities, revenues and expenses in our financial statements and accompanying notes. Management bases its estimates on historical information and assumptions believed to be reasonable. Although these estimates are based on management's best knowledge of current events and circumstances that may impact us in the future, actual results may differ from these estimates.

Our critical accounting policies are those that affect our financial statements materially and involve a significant level of judgment by management. Our critical accounting policies regarding revenue recognition are in the following areas: manufacturing contracts, license and royalty agreements, and grant revenues. Our critical accounting policies also include recognition of research and development expenses and the valuation of long-lived and intangible assets.

Revenue Recognition

We recognize revenue in accordance with SEC Staff Accounting Bulletin Topic 13, "Revenue Recognition" and Emerging Issues Task Force No. 00-21, or EITF No. 00-21, "Accounting for Revenue Arrangements with Multiple Deliverables." Revenue is recognized when the four basic criteria of revenue recognition are met: (1) persuasive evidence of an arrangement exists; (2) delivery has occurred or services rendered; (3) the fee is fixed or determinable; and (4) collectability is reasonably assured.

C*ontract Manufacturing Revenue.* Our contract manufacturing arrangements typically require the delivery of multiple lots of clinical vaccines. In accordance with EITF No. 00-21, we analyze our multiple element arrangements to determine whether the elements can be separated and accounted for individually as separate units of accounting. The evaluation is performed at the inception of the arrangement. The delivered item(s) is considered a separate unit of accounting if all of the following criteria are met: (1) the delivered item(s) has value to the customer on a standalone basis; (2) there is objective and reliable evidence of the fair value of the undelivered item(s); and (3) if the arrangement includes a general right of return relative to the delivered item, delivery or performance of the undelivered item(s) is considered probable and substantially in our control. If the delivered item does not have standalone value or if we do not have objective or reliable evidence of the fair value of the undelivered component, the amount of revenue allocable to the delivered item is deferred.

License and Royalty Revenue. Our license and royalty revenues are generated through agreements with strategic partners. Nonrefundable, up-front license fees and milestone payments with standalone value that are not dependent on any future performance by us under the agreements are recognized as revenue upon the earlier of when payments are received or collection is assured, but are deferred if we have continuing performance obligations. If we have continuing involvement through contractual obligations under such agreements, such up-front fees are deferred and recognized over the period for which we continue to have a performance obligation, unless all of the following criteria exist: (1) the delivered item(s) have standalone value to the customer, (2) there is objective and reliable evidence of the fair value of the undelivered item(s), and (3) there is no general right to return the delivered item(s).

We recognize royalty revenues from licensed products when earned in accordance with the terms of the license agreements. Net sales figures used for calculating royalties include deductions for costs of returns, cash discounts, and freight and warehousing, which may vary over the course of the license agreements. Payments received related to milestones are recognized as revenue upon the achievement of the milestones as specified in the underlying agreements, which represent the culmination of the earnings process.

Government Research Grant Revenue. We recognize revenues from federal government research grants during the period in which the related expenditures are incurred.

Research and Development Expenses

Research and development expenses consist of expenses incurred in performing research and development activities including salaries and benefits, facilities and other overhead expenses, clinical trials, contract services and other outside expenses. Research and development expenses are charged to operations as they are incurred.

We assess our obligations to make milestone payments that may become due under licensed or acquired technology to determine whether the payments should be expensed or capitalized. We charge milestone payments to research and development expense when:

- The technology is in the early stage of development and has no alternative uses;
- There is substantial uncertainty of the technology or product being successful;
- There will be difficulty in completing the remaining development; and
- There is substantial cost to complete the work.

Capitalization and Valuation of Long-Lived and Intangible Assets

Intangible assets with finite useful lives consist of capitalized legal costs incurred in connection with patents, patent applications pending and technology license agreements. Payments to acquire a license to use a proprietary technology are capitalized if the technology is expected to have alternative future use in multiple research and development projects. We amortize costs of approved patents, patent applications pending and license agreements over their estimated useful lives, or terms of the agreements, whichever are shorter.

For patents pending, we amortize the costs over the shorter of a period of twenty years from the date of filing the application or, if licensed, the term of the license agreement. We re-assess the useful lives of patents when they are issued, or whenever events or changes in circumstances indicate the useful lives may have changed. For patents and patent applications pending that we abandon, we charge the remaining unamortized accumulated costs to expense.

Intangible assets and long-lived assets are evaluated for impairment whenever events or changes in circumstances indicate that their carrying value may not be recoverable. If the review indicates that the carrying value of intangible assets or long-lived assets are not recoverable, their carrying amount would be reduced to fair value. Factors we consider important that could trigger an impairment review include the following:

- A significant change in the manner of our use of the acquired asset or the strategy for our overall business; and/or
- A significant negative industry or economic trend.

When we determine that the carrying value of intangible assets or long-lived assets are not recoverable based upon the existence of one or more of the above indicators of impairment, we may be required to record impairment charges for these assets. Our largest group of intangible assets with finite lives was patents and patents pending for our DNA delivery technology which had a net carrying value of approximately $3.1 million at June 30, 2006.

Recent Accounting Pronouncements

For information on the recent accounting pronouncements impacting our business, see Note 1 of the Notes to Financial Statements included in this Report.

Change in Accounting Method for Share-Based Compensation

As a result of the adoption of SFAS No. 123R, as discussed in Note 2 of the Notes to Financial Statements included in this Report, our loss from operations and net loss for the three and six months ended June 30, 2006, was $0.4 million, or $0.01 per share, and $0.8 million, or $0.03 per share, respectively, higher than under our previous accounting method for stock-based compensation.

Results of Operations

Three Months Ended June 30, 2006, Compared with Three Months Ended June 30, 2005

Total Revenues. Total revenues increased $2.5 million, or 50.9%, to $7.3 million for the three months ended June 30, 2006, from $4.8 million for the three months ended June 30, 2005. Revenues from our contracts and grants were $7.1 million for the three months ended June 30, 2006, compared with $0.5 million for the three months ended June 30, 2005. Contract and grant revenue for the three months ended June 30, 2006, included revenues of $6.4 million related to production orders for clinical lots of DNA vaccines for the VRC.

License and royalty revenue was $0.2 million for the three months ended June 30, 2006, compared with $4.3 million for the three months ended June 30, 2005. Second quarter 2005 license and royalty revenue included $4.0 million in license fees received from Merck and AnGes.

Research and Development Expenses. Research and development expenses decreased $0.6 million, or 12.3%, to $4.2 million for the three months ended June 30, 2006, from $4.8 million for the three months ended June 30, 2005. Second quarter 2005 research and development expenses included royalty payments made to the WARF in connection with the Merck and AnGes license fees.

Manufacturing and Production Expenses. Manufacturing and production expenses increased $1.1 million, or 34.2%, to $4.5 million for the three months ended June 30, 2006, from $3.4 million for the three months ended June 30, 2005. This increase was primarily the result of the recognition of contract manufacturing costs associated with the shipment of clinical lots of DNA vaccines to the VRC during the second quarter of 2006. This increase was offset by a decrease in facility-related costs as a result of the shutdown of one of our facilities in the prior period.

General and Administrative Expenses. General and administrative expenses increased $0.5 million, or 25.1%, to $2.4 million for the three months ended June 30, 2006, from $1.9 million for the three months ended June 30, 2005. The increase was primarily the result of increased stock compensation expense related to the implementation of SFAS No. 123R.

Investment Income. Investment income increased $0.3 million, or 70.2%, to $0.7 million for the three months ended June 30, 2006, from $0.4 million for the three months ended June 30, 2005. This increase was primarily the result of higher rates of return on our investments during the three months ended June 30, 2006, and higher average cash and short-term investment balances.

Interest Expense. Interest expense decreased $65,000, or 46.8%, to $74,000 for the three months ended June 30, 2006, from $139,000 for the three months ended June 30, 2005. The decrease was the result of lower interest rates and lower principal amounts outstanding on our equipment financing obligations.

Six Months Ended June 30, 2006, Compared with Six Months Ended June 30, 2005

Total Revenues. Total revenues increased $5.4 million, or 71.8%, to $12.9 million for the six months ended June 30, 2006, from $7.5 million for the six months ended June 30, 2005. Revenues from our contracts and grants were $12.7 million for the six months ended June 30, 2006, compared with $2.9 million for the six months ended June 30, 2005. Revenues from the shipment of clinical lots of DNA vaccines to the VRC totaled $10.2 million and $1.1 million for the six months ended June 30, 2006 and 2005, respectively. Revenues from various NIH grants, including grants related to CMV, totaled $2.5 million and $1.7 million for the six months ended June 30, 2006 and 2005, respectively.

License and royalty revenue was $0.2 million for the six months ended June 30, 2006, compared with $4.6 million for the six months ended June 30, 2005. The six months ended June 30, 2005 included license fees received from Merck and AnGes, which totaled $3.0 million and $1.0 million, respectively.

Research and Development Expenses. Research and development expenses decreased $0.4 million, or 4.5%, to $8.8 million for the six months ended June 30, 2006, from $9.2 million for the six months ended June 30, 2005. The six months ended June 30, 2005, included royalty payments made to the WARF in connection with the Merck and AnGes license fees. In addition, we had a lower average headcount during the six months ended June 30, 2006, when compared to the prior period.

Manufacturing and Production Expenses. Manufacturing and production expenses increased $0.8 million, or 10.8%, to $8.1 million for the six months ended June 30, 2006, from $7.3 million for the six months ended June 30, 2005. This increase was primarily the result of the recognition of contract manufacturing costs associated with the shipment of clinical

lots of DNA vaccines to the VRC during the current period. This increase was offset by a decrease in facility related costs as a result of the shutdown of one of our facilities in the prior period.

General and Administrative Expenses. General and administrative expenses increased $0.8 million, or 20.1%, to $4.8 million for the six months ended June 30, 2006, from $4.0 million for the six months ended June 30, 2005. The increase was primarily the result of increased stock compensation expense related to the implementation of SFAS No. 123R.

Investment Income. Investment income increased $0.5 million, or 68.8%, to $1.3 million for the six months ended June 30, 2006, from $0.8 million for the six months ended June 30, 2005. This increase was primarily the result of higher rates of return on our investments during the six months ended June 30, 2006, and higher average cash and short-term investment balances.

Interest Expense. Interest expense decreased $0.1 million, or 41.4%, to $0.2 million for the six months ended June 30, 2006, from $0.3 million for the six months ended June 30, 2005. The decrease was the result of lower interest rates and lower principal amounts outstanding on our equipment financing obligations.

Liquidity and Capital Resources

Since our inception, we have financed our operations primarily through private placements of preferred and common stock, public offerings of common stock, and revenues from collaborative agreements and grants. From our inception through June 30, 2006, we have received approximately $131.5 million in revenues from performing services under research and development contracts, grants, and manufacturing contracts, and from licensing access to our proprietary technologies, and we have raised net proceeds of approximately $248.5 million from the sale of equity securities. As of June 30, 2006, we had working capital of approximately $64.3 million, compared with $63.4 million at December 31, 2005. Cash, cash equivalents and marketable securities, including restricted securities, totaled approximately $59.7 million at June 30, 2006, compared with $66.5 million at December 31, 2005. The decline in our cash, cash equivalents and marketable securities in the six months ended June 30, 2006, was due primarily to the use of cash to fund our operations and to pay our equipment financing obligations.

Net cash used in operating activities was $11.0 million and $11.9 million for the six months ended June 30, 2006 and 2005, respectively. The decrease in net cash used in operating activities for the six months ended June 30, 2006, compared with the same period in the prior year, was primarily the result of a decrease in our net loss due to the gross profit derived from the VRC production orders offset by an increase in accounts receivable balances related to the VRC production orders and a decrease in accounts payable, accrued expense and other liabilities.

Net cash provided by investing activities was $9.0 million and $8.7 million for the six months ended June 30, 2006 and 2005, respectively. The increase in cash provided by investing activities for the six months ended June 30, 2006, compared with the same period in the prior year, was primarily the result of a decrease in cash used to purchase property and equipment which was partially offset by a decrease in net maturities of investments.

Net cash provided by (used in) financing activities was $4.8 million and ($1.8) million for the six months ended June 30, 2006 and 2005, respectively. The increase in cash provided by financing activities for the six months ended June 30, 2006, compared with the same period in the prior year, was primarily the result of the sale of our common stock to AnGes which was partially offset by a decrease in proceeds from equipment financing arrangements.

We expect to incur substantial additional research and development expenses, manufacturing and production expenses, and general and administrative expenses, including continued personnel costs, costs related to preclinical and clinical testing, outside services, facilities, intellectual property and possible commercialization costs. Our future capital requirements will depend on many factors, including continued scientific progress in our research and development programs, the scope and results of preclinical testing and clinical trials, the time and costs involved in obtaining regulatory approvals, the costs involved in filing, prosecuting, enforcing and defending patent claims, the impact of competing technological and market developments, the cost of manufacturing scale-up, and possible commercialization activities and arrangements. We may seek additional funding through research and development relationships with suitable potential corporate collaborators. We may also seek additional funding through public or private financings. We have on file a shelf registration statement, which was declared effective in March 2006, that allows us to raise up to $70 million from the sale of common or preferred stock. We also have on file a shelf registration statement, which was declared effective in December 2003, that allows us to raise up to an additional $8.8 million from the sale of common or preferred stock. However, additional financing may not be available on favorable terms or at all. If additional funding is not available, we anticipate that our available cash and existing sources of funding will be adequate to satisfy our operating needs through at least December 31, 2007.

Contractual Obligations

In December 2004, we modified an equipment financing agreement which provided for $5.3 million of financing, with interest rates ranging from 3.0% to 3.2%, with payments of principal and interest due through 2009. A portion of the financing was used to repay outstanding debt of approximately $2.2 million under another credit facility. Additional amounts were used to finance equipment purchases. The draw down period for this equipment financing arrangement ended in October 2005. The agreement requires a non-interest-bearing cash security deposit in the amount of 60.0% of the amount of each draw down, which amounts are included in current and long-term other assets. This financing involves restrictive financial covenants, including a requirement that we maintain unrestricted cash and marketable securities of at least $25.0 million or obtain a letter of credit from another lender in the amount of outstanding borrowings.

Under certain licensing agreements with collaborators, we are required to pay up to 10% of certain initial upfront monetary payments, and a small percentage of some royalty payments, to the WARF and the University of Michigan. Pursuant to certain agreements whereby we have licensed technology from others, we may be required to make payments if we or our sublicensees advance products through clinical development. For programs developed with the support of U.S. government funding, the U.S. government may have rights to resulting products without payment of royalties.

In addition, we have undertaken certain commitments under license agreements with collaborators, and under indemnification agreements with our officers and directors. Under the license agreements with our collaborators, we have agreed to continue to maintain and defend the patent rights licensed to the collaborators. Under the indemnification agreements with our officers and directors, we have agreed to indemnify those individuals for any expenses and liabilities in the event of a threatened, pending or actual investigation, lawsuit, or criminal or investigative proceeding.

As of June 30, 2006, we had employment agreements that contained severance arrangements with each of our three executive officers and four other executives. Under these agreements, we are obligated to pay severance if we terminate an executive officer's or other executive's employment other than for "cause" or "disability," or if an executive officer or other executive resigns for "good reason," as defined in the agreements, within the periods set forth therein. The severance would consist of continued payments at the current base compensation rate, or current base compensation rate plus the prior year's cash bonus in the case of the CEO, for the period specified in each agreement, which ranges from six to twelve months. These agreements also specify that any earnings from employment or consulting during this period will offset any salary continuation payments due from us. The maximum payments due under these employment agreements would have been $1.6 million if each executive officer and other executive was terminated at June 30, 2006.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are subject to interest rate risk. Our investment portfolio is maintained in accordance with our investment policy which defines allowable investments, specifies credit quality standards and limits the credit exposure of any single issuer. Our investment portfolio consists of cash equivalents, both restricted and non-restricted, and marketable securities. The average maturity of our non-equity investments is approximately nine months. Our investments are classified as available-for-sale securities.

To assess our interest rate risk, we performed a sensitivity analysis projecting an ending fair value of our cash equivalents and marketable securities using the following assumptions: a 12-month time horizon, a 9-month average maturity and a 150-basis-point increase in interest rates. This pro forma fair value would have been $0.1 million lower than the reported fair value of our non-equity investments at June 30, 2006. At June 30, 2006, our unrealized loss on non-equity investments was $0.1 million. We expect lower investment income for the full year 2006 compared with 2005 due to lower investment balances.

ITEM 4. CONTROLS AND PROCEDURES

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this Report. Based on this evaluation, our principal executive officer and principal financial officer concluded that our disclosure controls and procedures were effective as of June 30, 2006.

Changes in Internal Controls

There has been no change in our internal control over financial reporting during the three months ended June 30, 2006, that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1A. RISK FACTORS

You should consider carefully the risks described below, together with all of the other information included in this Report, and in our other filings with the SEC, before deciding whether to invest in or continue to hold our common stock. The risks described below are all material risks currently known, expected or reasonably foreseeable by us. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our common stock to decline, resulting in a loss of all or part of your investment. The risk factors below contain certain changes from the risk factors disclosed in our Annual Report on Form 10-K filed on March 10, 2006.

None of our independently developed products has been approved for sale, and we have a limited number of independent product candidates in clinical trials. If we do not develop commercially successful products, we may be forced to curtail or cease operations.

All of our independent product candidates are either in research or development. We must conduct a substantial amount of additional research and development before any U.S. or foreign regulatory authority will approve any of our products. Limited data exist regarding the safety and efficacy of DNA vaccines or therapeutics compared with conventional vaccines or therapeutics. Results of our research and development activities may indicate that our potential products are unsafe or ineffective. In this case, regulatory authorities will not approve them.

For example, our independent product candidates currently in clinical evaluation include our CMV vaccine, for which we initiated Phase 2 clinical testing in early 2006, and our IL-2/EP program, which is currently in Phase 1 clinical testing. We may not conduct additional CMV vaccine trials, leading transplant centers may not participate or sufficiently enroll patients in our trials, and our CMV vaccine may not elicit sufficient immune responses in humans. We may not conduct additional IL-2/EP trials, and our IL-2/EP program may not demonstrate sufficient safety and efficacy to support product approval.

Additionally, we are in various stages of development with several other product candidates. These product candidates will require significant costs to advance through the development stages. If such product candidates are advanced through clinical trials, the results of such trials may not support approval by the FDA or comparable foreign agencies. Even if approved, our products may not be commercially successful. If we fail to develop and commercialize our products, we may be forced to curtail or cease operations.

Our revenues partially depend on the development and commercialization of products in collaboration with others to whom we have licensed our technologies or on whom we rely to support our development and commercialization efforts. If our collaborators or licensees are not successful or cease to support our development and commercialization efforts, or if we are unable to find collaborators or licensees in the future, we may not be able to derive revenues from these arrangements or may be forced to curtail our development and commercialization of certain products.

We have licensed, and may continue to license, our technologies to corporate collaborators and licensees for the research, development and commercialization of specified product candidates. Our revenues partially depend upon the performance by these collaborators and licensees of their responsibilities under these arrangements. In addition, we have entered into an R&D Agreement with AnGes, pursuant to which we rely on AnGes to help fund further development of our cancer immunotherapeutic, Allovectin-7®.

Some collaborators or licensees may not succeed in their product development efforts, such as Corautus, which recently terminated a Phase 2b angiogenesis trial involving pDNA-based delivery of VEGF-2 based on the recommendation of an independent data monitoring committee. Other collaborators or licensees may not devote sufficient time or resources to the programs covered by these arrangements, causing us to derive little or no revenue from these arrangements, or may cease to support our development and commercialization efforts.

Our collaborators and licensees may breach or terminate their agreements with us, including some that may terminate their agreements without cause at any time subject to certain prior written notice requirements, and we may be unsuccessful in entering into and maintaining other collaborative arrangements for the development and commercialization of products using our technologies.

Some of our independent product candidates and some of those under development by our sublicensees incorporate technologies we have licensed from others. If we are unable to retain rights to use these technologies, we or our sublicensees may not be able to market products incorporating these technologies on a commercially feasible basis, if at all.

We have licensed certain technologies from corporate collaborators and research institutions, and sublicensed certain of such technologies to others, for use in the research, development and commercialization of product candidates. Our product development efforts and those of our sublicensees partially depend upon continued access to these technologies. For example, we or our licensors may breach or terminate our agreements, or disagree on interpretations of those agreements, which could prevent continued access to these technologies. If we were unable to resolve such matters on satisfactory terms, or at all, we or our sublicensees may be unable to develop and commercialize our products, and we may be forced to curtail or cease operations.

A significant portion of our revenue is derived from agreements with government agencies, which are subject to termination and uncertain future funding.

We have entered into agreements with government agencies, such as the NIH, and we intend to continue entering into these agreements in the future. For example, we have entered into agreements to manufacture DNA vaccines for the VRC. Our business is partially dependent on the continued performance by these government agencies of their responsibilities under these agreements, including adequate continued funding of the agencies and their programs. We have no control over the resources and funding that government agencies may devote to these agreements, which may be subject to annual renewal and which generally may be terminated by the government agencies at any time. For example, our 2003 subcontract agreement to manufacture bulk DNA vaccines for the VRC expired in July 2006.

If we fail to satisfy our remaining contractual obligations to deliver the vaccines ordered by the VRC in the manner required by the 2003 subcontract agreement, we may be required to perform corrective actions, including but not limited to delivering to the VRC any uncompleted or partially completed work, or other government property in our possession, or paying a third-party supplier selected by the VRC to complete any uncompleted work. The performance of these corrective actions could have a material adverse impact on our financial results in the period or periods affected.

There are only a limited number of other contractors that could manufacture bulk DNA in the unlikely event that we were unable to perform our remaining responsibilities under the 2003 subcontract agreement. The price these other contractors might charge could be more than what we would charge based on their capacity, utilization, size of order and other factors. Accordingly, we are unable to estimate a range of potential cost that we could be required to pay if the VRC were to engage a substitute contractor to meet any performance obligations that we were unable to meet.

Government agencies may fail to perform their responsibilities under these agreements, which may cause them to be terminated by the government agencies. In addition, we may fail to perform our responsibilities under these agreements. Many of our government agreements are subject to audits which may occur several years after the period to which the audit relates. If an audit identifies significant unallowable costs, we could incur a material charge to our earnings or reduction in our cash position. As a result, we may be unsuccessful or ineligible to enter into future government agreements.

We apply for and have received funding from various government agencies. Eligibility of public companies to receive grants, such as Small business Technology Transfer, or STTR, and SBIR grants, may be based on size and ownership criteria which are under review by the Small Business Administration, or SBA. As a result, our eligibility may change in the future, and additional funding from this source may not be available.

We have a history of net losses. We expect to continue to incur net losses and we may not achieve or maintain profitability.

To date, we have not sold or received approval to sell any pharmaceutical products. We do not expect to sell any pharmaceutical products for at least the next several years. Our net losses were approximately $24.4 million, $23.7 million and $24.5 million for the years ended December 31, 2005, 2004 and 2003, respectively. As of June 30, 2006, we had incurred

cumulative net losses totaling approximately $170.6 million. Moreover, we expect that our net losses will continue and may increase for the foreseeable future. We may not be able to achieve projected results if we generate lower revenues or receive lower investment income than expected, or we incur greater expenses than expected, or all of the above. We may never generate sufficient product revenue to become profitable. We also expect to have quarter-to-quarter fluctuations in revenues, expenses, and losses, some of which could be significant.

We may need additional capital in the future. If additional capital is not available, we may have to curtail or cease operations.

We may need to raise more money to continue the research and development necessary to bring our products to market and to establish marketing and additional manufacturing capabilities. We may seek additional funds through public and private stock offerings, government contracts and grants, arrangements with corporate collaborators, borrowings under lease lines of credit or other sources. We have on file a shelf registration statement, which was declared effective in March 2006, that allows us to raise up to $70 million from the sale of common or preferred stock. We also have on file a shelf registration statement, which was declared effective in December 2003, that allows us to raise up to an additional $8.8 million from the sale of common or preferred stock. However, we may not be able to raise additional funds on favorable terms, or at all.

If we are unable to obtain additional funds, we may have to scale back our development of new products, reduce our workforce or license to others products or technologies that we otherwise would seek to commercialize ourselves. The amount of money we may need would depend on many factors, including:

- The progress of our research and development programs;
- The scope and results of our preclinical studies and clinical trials; and
- The time and costs involved in: obtaining necessary regulatory approvals; filing, prosecuting and enforcing patent claims; scaling up our manufacturing capabilities; and the commercial arrangements we may establish.

The regulatory approval process is expensive, time consuming and uncertain, which may prevent us from obtaining required approvals for the commercialization of our products.

Our product candidates under development and those of our collaborators and licensees are subject to extensive and rigorous regulations by numerous governmental authorities in the U.S. and other countries. The regulations are evolving and uncertain. The regulatory process can take many years and require us to expend substantial resources. For example:

- The FDA has not established guidelines concerning the scope of clinical trials required for gene-based therapeutic and vaccine products;
- The FDA has provided only limited guidance on how many subjects it will require to be enrolled in clinical trials to establish the safety and efficacy of gene-based products; and
- Current regulations and guidances are subject to substantial review by various governmental agencies.

Therefore, U.S. or foreign regulations could prevent or delay regulatory approval of our products or limit our ability to develop and commercialize our products. Delays could:

- Impose costly procedures on our activities;
- Diminish any competitive advantages that we attain; or
- Negatively affect our results of operations and cash flows.

We have no experience in filing BLAs with the FDA. Because a BLA must be filed with and approved by the FDA before a biologic product may be commercialized, our lack of experience may impede our ability to obtain FDA approval in a timely manner, if at all, for our products, which in turn would delay or prevent us from commercializing those products. Similarly, our lack of experience with respect to obtaining regulatory approvals in countries other than the U.S. may impede our ability to commercialize our products in those countries.

We believe that the FDA and comparable foreign regulatory bodies will regulate separately each product containing a particular gene depending on its intended use. Presently, to commercialize any product we must sponsor and file a

regulatory application for each proposed use. We must conduct clinical studies to demonstrate the safety and efficacy of the product necessary to obtain FDA approval. The results obtained so far in our clinical trials may not be replicated in our ongoing or future trials. This may prevent any of our potential products from receiving FDA approval.

We use recombinant DNA molecules in our product candidates, and therefore we also must comply with guidelines instituted by the NIH and its Office of Biotechnology Activities. The NIH could restrict or delay the development of our product candidates.

In March 2004, the NIH Office of Biotechnology Activities and the FDA Center for Biologics Evaluation and Research launched the jointly developed Genetic Modification Clinical Research Information System, or GeMCRIS, an Internet-based database of human gene transfer trials. In its current form, GeMCRIS enables individuals to easily view information on particular characteristics of clinical gene transfer trials, and includes special security features designed to protect patient privacy and confidential commercial information. These security features may be inadequate in design or enforcement, potentially resulting in disclosure of confidential commercial information. We understand that both the FDA and the NIH are considering rules and regulations that would require public disclosure of additional commercial development data that is presently confidential. In addition, the NIH, in collaboration with the FDA, has developed an Internet site, ClinicalTrials.gov, which provides public access to information on clinical trials for a wide range of diseases and conditions. Such disclosures of confidential commercial information, whether by implementation of new rules or regulations, by inadequacy of GeMCRIS security features, or by intentional posting on the Internet, may result in loss of advantage of competitive secrets.

A rule published in 2002 by the FDA, known commonly as the "Animal Rule," established requirements for demonstrating effectiveness of drugs and biological products in settings where human clinical trials for efficacy are not feasible or ethical. The rule requires as conditions for market approval the demonstration of safety and biological activity in humans, and the demonstration of effectiveness under rigorous test conditions in up to two appropriate species of animal. We believe that with appropriate guidance from the FDA, we may seek and win market approval under the Animal Rule for certain DNA-based products for which human clinical efficacy trials are not feasible or ethical. At the moment, however, we cannot determine whether the Animal Rule would be applied to any of our products, or if applied, that its application would result in expedited development time or regulatory review.

Adverse events in the field of gene therapy, or with respect to our product candidates, may negatively impact regulatory approval or public perception of our products.

The death in 1999 of a patient undergoing a viral-delivered gene therapy at the University of Pennsylvania in an investigator-sponsored trial was widely publicized. In October 2002, January 2003, and January 2005, three children in France who received viral-delivered ex vivo gene transfer for the treatment of X-linked Severe Combined Immunodeficiency Disease, called X-SCID or "bubble boy" syndrome, were diagnosed with leukemia that was potentially caused by the integration of the viral delivery vehicle in or near a cancer-causing region of the children's genome. Certain gene therapy clinical trials were placed on clinical hold following the second child's death, and the trial in which the children had been enrolled was again placed on hold following the third child's death. In October 2004, the FDA requested that clinical trials of another company's viral-delivered gene therapy product candidate be placed on clinical hold pending review of information pertaining to potential adverse events. A portion of one of the trials was subsequently allowed to resume.

In 2003, the FDA proposed a new rule on "Safety Reporting Requirements for Human Drug and Biological Products" that would change the reporting requirements for drugs and biological products, such that any serious adverse event that cannot be definitely excluded as related to the product will be reported in an expedited manner. At present, sponsors of clinical research typically report on an annual basis all serious adverse events that have been deemed to be "unlikely" or "improbable." The effect of this proposed rule will likely be to increase the number of expedited reports of serious adverse events to the FDA, which may create a perception of increased adverse events and higher risk profiles, despite no change in the actual severity or the actual number of adverse events that occur in the course of a product's development.

Some of our potential products may be administered to patients who are suffering from, or are vulnerable to, diseases which can themselves be life-threatening. For example, one patient who had undergone treatment with Allovectin-7® for advanced metastatic melanoma died more than two months later of progressive disease and numerous other factors after receiving multiple other cancer therapies. The death was originally reported as unrelated to the treatment. Following an autopsy, the death was reclassified as "probably related" to the treatment because the possibility could not be ruled out. We do not believe Allovectin-7® was a significant factor in the patient's death. As another example, in our Phase 2 trial, we are administering our investigational CMV vaccine to patients who are at risk of CMV reactivation. Although we do not believe

our vaccine candidates could cause the diseases they are designed to protect against, a temporal relationship between vaccination and disease onset could be perceived as causal. Some of our products are designed to stimulate immune responses, and those responses, if particularly strong or uncontrolled, could result in local or systemic adverse events.

These adverse events, and real or perceived risks, could result in greater government regulation and stricter labeling requirements for DNA-based vaccines or therapies, and may adversely impact market acceptance of some of our product candidates. Increased scrutiny in the field of gene therapy also may cause regulatory delays or otherwise affect our product development efforts or clinical trials.

Our patents and proprietary rights may not provide us with any benefit and the patents of others may prevent us from commercializing our products.

We are the assignee of 43 issued U.S. and foreign patents. We are also co-assignee, together with Sanofi Pasteur and the University of Texas Health Science Center, of two issued U.S. patents related to vaccines against Lyme disease. In addition, we have been granted a Japanese patent related to our core DNA delivery technology that is subject to Trials for Invalidation, or TFIs; a recently granted patent in Europe related to our core DNA delivery technology has been opposed by eight parties; a patent granted in Europe covering a range of applications of our core DNA delivery technology using cationic lipid formulations was opposed and maintained in amended form; and a patent granted in Europe covering gene-based, extra-tumoral delivery of any cytokine for the treatment of cancer has also been opposed.

We are also prosecuting 62 pending patent applications in the U.S. and in foreign countries that cover various aspects of our proprietary technologies, not including patent applications for which we are a co-assignee and that are being prosecuted by our partners. Three of the pending foreign patent applications are international patent applications under the Patent Cooperation Treaty, each of which preserves our right to pursue national-phase patent applications in a large number of foreign countries. In addition, we are co-assignee, together with Merck, of U.S. and foreign patent applications related to DNA-based vaccines against influenza that are being prosecuted by Merck.

We may not receive any patents from our current patent applications. Issued patents provide exclusivity for only a limited time period, after which they no longer serve to protect proprietary technologies or to provide any commercial advantage. Moreover, if patents are issued to us, governmental authorities may not allow claims sufficient to protect our technologies and products. Finally, others may challenge or seek to circumvent or invalidate our patents. In that event, the rights granted under our patents may be inadequate to protect our proprietary technologies or to provide any commercial advantage.

Once issued, we maintain our patents by paying maintenance fees to the patent office in each country when due. Where appropriate, we participate in legal proceedings to vigorously defend against the revocation or withdrawal of our patents. The scope and nature of these proceedings generally differ depending on the country in which they are initiated.

For example: in Europe, four patents granted to us have been opposed and one was revoked as a consequence of opposition; in Japan, one patent granted to us was opposed and subsequently subjected to TFIs; and in Canada, a protest was lodged against a patent application filed by us. If we are not successful in defending our patents, we may lose all or part of our proprietary rights related to those patents in these geographic regions.

Some components of our gene-based product candidates are, or may become, patented by others. As a result, we may be required to obtain licenses to conduct research, to manufacture, or to market such products. Licenses may not be available on commercially reasonable terms, or at all, which may impede our ability to commercialize our products.

The legal proceedings to obtain and defend patents, and litigation of third-party claims of intellectual property infringement, could require us to spend money and could impair our operations.

Our success will depend in part on our ability to obtain patent protection for our products and processes, both in the U.S. and in other countries. The patent positions of biotechnology and pharmaceutical companies, however, can be highly uncertain and involve complex legal and factual questions. Therefore, it is difficult to predict the breadth of claims allowed in the biotechnology and pharmaceutical fields.

We also rely on confidentiality agreements with our corporate collaborators, employees, consultants and certain contractors to protect our proprietary technologies. However, these agreements may be breached and we may not have adequate remedies for such breaches. In addition, our trade secrets may otherwise become known or independently discovered by our competitors.

Protecting intellectual property rights can be very expensive. Litigation may be necessary to enforce patents issued to us or to determine the scope and validity of third-party proprietary rights. Moreover, if a competitor were to file a patent application claiming technology also invented by us, we would have to participate in an interference proceeding before the U.S. Patent and Trademark Office to determine the priority of the invention. We may be drawn into interferences with third parties or may have to provoke interferences ourselves to unblock third-party patent rights to allow us or our licensees to commercialize products based on our technologies. Litigation could result in substantial costs and the diversion of management's efforts regardless of the results of the litigation. An unfavorable result in litigation could subject us to significant liabilities to third parties, require disputed rights to be licensed or require us to cease using some technologies.

Our products and processes may infringe, or be found to infringe, patents not owned or controlled by us. Patents held by others may require us to alter our products or processes, obtain licenses, or stop activities. If relevant claims of third-party patents are upheld as valid and enforceable, we could be prevented from practicing the subject matter claimed in the patents, or may be required to obtain licenses or redesign our products or processes to avoid infringement. In addition, we could be required to pay money damages. A number of genetic sequences or proteins encoded by genetic sequences that we are investigating are, or may become, patented by others. As a result, we may have to obtain licenses to test, use or market these products. Our business will suffer if we are not able to obtain licenses at all or on terms commercially reasonable to us and we are not able to redesign our products or processes to avoid infringement.

We have incurred costs in several legal proceedings involving our intellectual property rights in Europe, Japan and Canada. We may continue to incur costs to defend and prosecute patents and patent applications in these and other regions.

Competition and technological change may make our product candidates and technologies less attractive or obsolete.

We compete with companies, including major pharmaceutical and biotechnology firms, that are pursuing other forms of treatment or prevention for diseases that we target. We also may experience competition from companies that have acquired or may acquire technologies from universities and other research institutions. As these companies develop their technologies, they may develop proprietary positions which may prevent us from successfully commercializing products.

Some of our competitors are established companies with greater financial and other resources than we have. Other companies may succeed in developing products and obtaining regulatory approval from the FDA or comparable foreign agencies faster than we do, or in developing products that are more effective than ours. Research and development by others may seek to render our technologies or products obsolete or noncompetitive or result in treatments or cures superior to any therapeutics developed by us. Further our products may not gain market acceptance among physicians, patients, healthcare payers and the medical communities. If any of our products do not achieve market acceptance, we may lose our investment in that product, which could have a material adverse impact on our operations.

If we lose our key personnel or are unable to attract and retain additional personnel, we may not be able to achieve our business objectives.

We are highly dependent on our principal scientific, manufacturing, clinical, regulatory and management personnel, including Vijay B. Samant, our President and Chief Executive Officer. The loss of the services of these individuals might significantly delay or prevent the achievement of our objectives. We do not maintain "key person" life insurance on any of our personnel. We depend on our continued ability to attract, retain and motivate highly qualified management and scientific personnel. We face competition for qualified individuals from other companies, academic institutions, government entities and other organizations in attracting and retaining personnel. To pursue our product development plans, we may need to hire additional management personnel and additional scientific personnel to perform research and development, as well as additional personnel with expertise in clinical trials, government regulation and manufacturing. However, due to the reasons noted above, we may not be successful in hiring or retaining qualified personnel and therefore we may not be able to achieve our business objectives.

We have limited experience in manufacturing our product candidates in commercial quantities. We may not be able to comply with applicable manufacturing regulations or produce sufficient product for contract or commercial purposes.

The commercial manufacturing of vaccines and other biological products is a time-consuming and complex process, which must be performed in compliance with the FDA's current Good Manufacturing Practices, or cGMP, regulations. We may not be able to comply with the cGMP regulations, and our manufacturing process may be subject to delays, disruptions or quality control problems. In addition, we may need to complete the installation and validation of additional large-scale

fermentation and related purification equipment to produce the quantities of product expected to be required for commercial purposes. We have limited experience in manufacturing at this scale. Noncompliance with the cGMP regulations, the inability to complete the installation or validation of additional large-scale equipment, or other problems with our manufacturing process may limit or delay the development or commercialization of our product candidates, and cause us to breach our contract manufacturing service arrangements.

We may initially depend on third parties to manufacture our product candidates commercially.

We may initially depend on collaborators, licensees or other third parties to manufacture our product candidates in commercial quantities. There are a limited number of third parties that could manufacture our product candidates. We may be unable to enter into any arrangement for the commercial manufacture of our product candidates, and any arrangement we secure may not meet our requirements for manufacturing quality or quantity. Our dependence on third parties for the commercial manufacture of our product candidates may also reduce our profit margins and our ability to develop and deliver products in a timely manner.

We have no marketing or sales experience, and if we are unable to develop our own sales and marketing capability, we may not be successful in commercializing our products.

Our current strategy is to market our proprietary products directly in the U.S., but we currently do not possess pharmaceutical marketing or sales capabilities. To market and sell our proprietary products, we will need to develop a sales force and a marketing group with relevant pharmaceutical experience, or make appropriate arrangements with strategic partners to market and sell these products. Developing a marketing and sales force is expensive and time-consuming and could delay any product launch. If we are unable to successfully employ qualified marketing and sales personnel or develop other sales and marketing capabilities, we may not be able to generate sufficient product revenue to become profitable.

Healthcare reform and restrictions on reimbursement may limit our returns on potential products.

Our ability to earn sufficient returns on our products will depend in part on how much, if any, reimbursement for our products and related treatments will be available from:

- Government health administration authorities;
- Government agencies procuring biodefense products for military or public use, including some for which we may become a sole-source vendor;
- Private health coverage insurers;
- Managed care organizations; and
- Other organizations.

If we fail to obtain appropriate reimbursement, we could be prevented from successfully commercializing our potential products. There are efforts by governmental and third-party payers to contain or reduce the costs of healthcare through various means, including the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, which provides a new Medicare prescription drug benefit that was recently implemented and mandates other reforms. We expect that there will continue to be a number of legislative proposals to implement government controls. The adoption of such proposals or reforms could impair our business.

Certain portions of the Health Insurance Portability and Accountability Act of 1996, or HIPAA, have become effective and may complicate the process by which clinical trials may be initiated. We believe we have taken the necessary action to ensure compliance with HIPAA; however, the specific nature and degree of impact are not yet fully known.

Additionally, third-party payers are increasingly challenging the price of medical products and services. If purchasers or users of our products are not able to obtain adequate reimbursement for the cost of using our products, they may forego or reduce their use. Significant uncertainty exists as to the reimbursement status of newly approved healthcare products, and whether adequate third-party coverage will be available.

We use hazardous materials in our business. Any claims relating to improper handling, storage or disposal of these materials could be time consuming and costly.

Our research and development processes involve the controlled storage, use and disposal of hazardous materials, biological hazardous materials and minor amounts of low-level radioactive compounds. Our hazardous materials include certain compressed gases, flammable liquids, acids and bases, and other toxic compounds. We are subject to federal, state and local regulations governing the use, manufacture, storage, handling and disposal of materials and waste products. Although we believe that our safety procedures for handling and disposing of these hazardous materials comply with the standards prescribed by law and regulation, the risk of accidental contamination or injury from hazardous materials cannot be completely eliminated. In the event of an accident, we could be held liable for any damages that result. We have insurance that covers our use of hazardous materials with the following coverage limits: up to $25,000 per occurrence for losses related to the release of bio-contaminants, $1 million per occurrence for losses from refrigerant contamination and $25,000 per occurrence for losses from radioactive contamination. Any liability could exceed the limits or fall outside the coverage of our insurance. We could incur significant costs to comply with current or future environmental laws and regulations.

We may have significant product liability exposure.

We face an inherent business risk of exposure to product liability and other claims in the event that our technologies or products are alleged to have caused harm. We also have potential liability for products manufactured by us on a contract basis for third parties. Although we currently maintain product liability insurance in the amount of $10 million in the aggregate, this insurance coverage may not be sufficient, and we may not be able to obtain sufficient coverage in the future at a reasonable cost. Our inability to obtain product liability insurance at an acceptable cost or to otherwise protect against potential product liability claims could prevent or inhibit the commercialization of any products developed by us or our collaborators, or our ability to manufacture products for third parties. If we are sued for any injury caused by our technologies or products, or by third-party products that we manufacture, our liability could exceed our insurance coverage and total assets.

Our stock price could continue to be highly volatile and you may not be able to resell your shares at or above the price you pay for them.

The market price of our common stock, like that of many other life sciences companies, has been and is likely to continue to be highly volatile. From January 1, 2003, to June 30, 2006, our stock price has ranged from $2.12 to $8.14. The following factors, among others, could have a significant impact on the market price of our common stock:

- The results of our preclinical studies and clinical trials or announcements regarding our plans for future studies or trials, or those of our collaborators, licensees or competitors;
- Evidence or lack of evidence of the safety or efficacy of our potential products or those of our collaborators, licensees or competitors;
- The announcement by us or our collaborators, licensees or competitors of technological innovations or new products;
- Developments concerning our patent or other proprietary rights or those of our collaborators, licensees or competitors, including litigation and challenges to our proprietary rights;
- Other developments with our collaborators or licensees, including our entry into new collaborative or licensing arrangements;
- Geopolitical developments, natural or man-made disease threats, or other events beyond our control;
- U.S. and foreign governmental regulatory actions;
- Changes or announcements in reimbursement policies;
- Period-to-period fluctuations in our operating results;
- Market conditions for life science stocks in general;
- Changes in the collective short interest in our stock;
- Changes in estimates of our performance by securities analysts; and
- Our cash balances, need for additional capital, and access to capital.

We are at risk of securities class action litigation due to our expected stock price volatility.

In the past, stockholders have brought securities class action litigation against a company following a decline in the market price of its securities. This risk is especially acute for us because life science companies have experienced greater than average stock price volatility in recent years and, as a result, have been subject to, on average, a greater number of securities class action claims than companies in other industries. To date, we have not been subject to class action litigation. However, we may in the future be the target of this litigation. Securities litigation could result in substantial costs and divert our management's attention and resources, and could seriously harm our business.

Anti-takeover provisions in our charter documents and under Delaware law could make an acquisition of us, which may be beneficial to our stockholders, more difficult and may prevent attempts by our stockholders to replace or remove our current management.

Our certificate of incorporation and bylaws include anti-takeover provisions, such as a classified board of directors, a prohibition on stockholder actions by written consent, the authority of our board of directors to issue preferred stock without stockholder approval, and supermajority voting requirements for specified actions. In addition, because we are incorporated in Delaware, we are governed by the provisions of Section 203 of the Delaware General Corporation Law, which prohibits stockholders owning in excess of 15% of our outstanding voting stock from merging or combining with us. These provisions may delay or prevent an acquisition of us, even if the acquisition may be considered beneficial by some stockholders. In addition, they may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management.

The issuance of preferred stock could adversely affect our common stockholders.

We have on file an effective shelf registration statement that allows us to raise up to $70 million from the sale of common or preferred stock. We also have on file an effective shelf registration statement that allows us to raise up to an additional $8.8 million from the sale of common or preferred stock. The issuance of preferred stock could adversely affect the voting power of holders of our common stock, and reduce the likelihood that our common stockholders will receive dividend payments and payments upon liquidation. The issuance of preferred stock could also decrease the market price of our common stock, or have terms and conditions that could discourage a takeover or other transaction that might involve a premium price for our shares or that our stockholders might believe to be in their best interests.

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

The Annual Meeting of Stockholders of Vical Incorporated was held on May 19, 2006. At this meeting, we solicited the vote of the stockholders on the proposals set forth below and received for each proposal the votes indicated below:

(i) To elect one Class II director to serve until the 2009 Annual Meeting of Stockholders and until his successor is elected. R. Gordon Douglas, M.D. was elected to serve as the Class II director. The results of voting were: 24,614,326 for and 1,992,943 withheld. Our Class III directors, Robert H. Campbell and Gary A. Lyons, continue in office until the 2007 Annual Meeting of Stockholders. Our Class I directors, Robert C. Merton, Ph.D. and Vijay B. Samant, continue in office until the 2008 Annual Meeting of Stockholders.

(ii) To amend our Amended and Restated Stock Incentive Plan to increase the aggregate number of shares of common stock authorized for issuance under the plan by 1,000,000 shares. The amendment was ratified with the following votes: 10,720,377 for, 3,242,673 against, 41,425 abstained and 12,602,794 were broker non-votes.

(iii) To amend our Restated Certificate of Incorporation to increase the total number of authorized shares and the number of authorized shares of common stock to 85,000,000 and 80,000,000 shares, respectively. The amendment was ratified with the following votes: 21,611,218 for, 4,657,525 against and 338,526 abstained.

(iv) To ratify the selection by the Audit Committee of our Board of Directors of Deloitte & Touche LLP as our independent auditors for the year ending December 31, 2006. The selection of Deloitte & Touche LLP as independent auditors for the year ending December 31, 2006, was ratified with the following votes: 26,290,415 for, 275,709 against and 41,145 abstained.

On June 2, 2006, we dismissed Deloitte and Touche LLP as our principal independent accountant. On the same date we engaged Ernst & Young LLP to serve as our principal independent accountant for fiscal periods subsequent to the quarter ended March 31, 2006. The decision to dismiss Deloitte and Touche LLP and to engage Ernst & Young LLP was approved by the Company's Audit Committee.

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ITEM 6. EXHIBITS

Exhibit Number	Description of Document
3.1(i)(1)	Restated Certificate of Incorporation.
3.1(ii)(1)	Amended and Restated Bylaws.
3.2(i)(2)	Certificate of Amendment to Restated Certificate of Incorporation.
4.1(1)	Specimen Common Stock Certificate.
10.48	Amendment dated May 19, 2006, to employment offer letter effective October 11, 2004, between the Company and Jill M. Church.
10.49	Amendment dated May 19, 2006, to Employment Agreement dated September 13, 2001, between the Company and David C. Kaslow.
10.50(a)	Research and Development Agreement dated May 25, 2006, between the Company and AnGes MG, Inc.
10.51(a)	Stock Purchase Agreement dated May 25, 2006, between the Company and AnGes MG, Inc.
31.1(i)	Certification of Vijay B. Samant, Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2(i)	Certification of Jill M. Church, Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification of Vijay B. Samant, Chief Executive Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification of Jill M. Church, Chief Financial Officer, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

(1) Incorporated by reference to the exhibit of the same number filed with the Company's Registration Statement on Form S-3 (No. 33-95812) filed on August 15, 1995.

(2) Incorporated by reference to exhibit 4.2 filed with the Company's Registration Statement on Form S-8 (No. 333-135398) filed on June 28, 2006.

(a) The Company has requested confidential treatment for certain portions of this agreement which have been omitted and filed separately with the SEC pursuant to Rule 24b-2 under the Securities Exchange Act of 1934.

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SIGNATURE

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

Vical Incorporated

Date: August 4, 2006

By: /s/ JILL M. CHURCH
Jill M. Church
Vice President, Chief Financial Officer and Secretary (on behalf of the registrant and as the registrant's Principal Financial and Accounting Officer)

Exhibit 10.48

VICAL INCORPORATED
10390 Pacific Center Court
San Diego, CA 92121-4340

May 19, 2006

Jill M. Church
Vical Incorporated
10390 Pacific Center Court
San Diego, CA 92121-4340

Re: Amendment to Agreement Regarding Employment Terms

Dear Jill:

This Amendment (the "***Amendment***") to your Letter Agreement with Vical Incorporated (the "***Company***") dated September 20, 2004 (the "***Agreement***") amends the terms and conditions of the Agreement to the extent provided herein. Except as specifically amended by this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

The attachment to the Agreement titled "Salary Continuation" is hereby deleted in its entirety and replaced with the following:

"Salary Continuation"

Subject to *mitigation*, Vical will continue to pay your base compensation, at the rate then in effect, for up to six months following the termination of your employment if, prior to the expiration of your rights to salary continuation as provided below:

(i) Vical terminates your employment without your consent for any reason other than *Cause* or *Disability*; or

(ii) you voluntarily resign your employment for *Good Reason*

The salary continuation payments will cease in the event of your death. In order to receive your salary continuation, you will be required to sign a release in a form acceptable to Vical, of any and all claims that you may have against Vical. The salary continuation rights described herein shall expire on the fourth annual anniversary of the commencement of your employment; *provided, however*, that such rights shall automatically renew for successive 1 year periods unless the Company provides written notice to you at least 90 days prior to the next scheduled expiration date that such rights will not be renewed.

Definitions:

1. *Mitigation.* The payments described in the section above titled "Salary Continuation" shall be reduced on a dollar-for-dollar basis by any other compensation earned by you for personal services performed as an employee or

independent contractor during the six-month period following the termination of your employment, including (without limitation) deferred compensation. You will apply your best efforts to seek and obtain other employment or consulting engagements, whether on a full- or part-time basis during such six-month period in order to mitigate the Company's obligations. At reasonable intervals, you will report to Vical with respect to such efforts and any compensation earned during such six-month period.

2. *Cause* shall mean a failure to perform your duties, other than a failure resulting from complete or partial incapacity due to physical or mental illness or impairment, gross misconduct or fraud or conviction of, or a plea of "guilty" or "no contest" to a felony.

3. *Disability* shall mean that you, at the time your employment is terminated, have performed substantially none of your duties under this Agreement for a period of not less than three consecutive months as the result of your incapacity due to physical or mental illness.

4. *Good Reason* shall mean that you have incurred a material reduction in your authority or responsibility or a reduction in base salary of more than 25%."

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Amendment shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles.

Please sign this Amendment and return it to the Company at your earliest convenience.

Sincerely,

VICAL INCORPORATED

By: /s/ Vijay B. Samant
Vijay B. Samant
President and Chief Executive Officer

ACCEPTED AND AGREED:

/s/ Jill M. Church
Jill M. Church

Exhibit 10.49

VICAL INCORPORATED
10390 Pacific Center Court
San Diego, CA 92121-4340

May 19, 2006

Dr. David Kaslow
Vical Incorporated
10390 Pacific Center Court
San Diego, CA 92121-4340

Re: Amendment to Agreement Regarding Employment Terms

Dear David:

This Amendment (the "***Amendment***") to your Letter Agreement with Vical Incorporated (the "***Company***") dated September 13, 2001, as amended by the Letter Agreement dated October 4, 2001 and the Letter Agreement dated April 15, 2005 (collectively, the "***Agreement***") amends the terms and conditions of the Agreement to the extent provided herein. Except as specifically amended by this Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

Paragraph 8(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

> **"(c) Salary Continuation".** Subject to subsection (d) below, the Company will continue to pay your Base Compensation (at the annual rate then in effect) for up to twelve months following the termination of your employment if, prior to the expiration of your rights to salary continuation as provided below:
>
> (i) the Company terminates your employment without your consent for any reason other than Cause or Disability; or
>
> (ii) you voluntarily resign your employment for Good Reason.
>
> The payments under this subsection (c) will cease in the event of your death. In order to receive your salary continuation, you will be required to sign a release in a form acceptable to the Company, of any and all claims that you may have against the Company. The salary continuation rights described in this paragraph 8(c) shall expire on October 8, 2006; *provided, however*, that such rights shall automatically renew for successive 1 year periods unless the Company provides written notice to you at least 90 days prior to the next scheduled expiration date that such rights will not be renewed."

This Amendment may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Amendment shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles.

Please sign this Amendment and return it to the Company at your earliest convenience.

Sincerely,

VICAL INCORPORATED

By: /s/ Vijay B. Samant
Vijay B. Samant
President and Chief Executive Officer

ACCEPTED AND AGREED:

/s/ David C. Kaslow
David C. Kaslow

Exhibit 10.50

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2.**

RESEARCH AND DEVELOPMENT AGREEMENT

THIS RESEARCH AND DEVELOPMENT AGREEMENT (the ***"Agreement"***) is entered into as of May 25, 2006 (the ***"Effective Date"***) by and between **VICAL INCORPORATED**, a Delaware corporation (***"Vical"***), having an address of 10390 Pacific Center Court, San Diego, California 92121 and **ANGES MG INC.**, a Japanese corporation (***"AnGes"***), having an address of 7-7-15 Saito-Asagi, Ibaraki, Osaka, 567-0085, Japan.

RECITALS

WHEREAS, Vical and AnGes each has interest and experience in the field of gene therapy;

WHEREAS, Vical has completed certain clinical studies of the Product (as defined below) and intends to conduct further development of the Product; and

WHEREAS, the parties desire to enter into this Agreement with regard to further research and development of the Product, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

1.1 "Affiliate" shall mean any entity controlled by, controlling, or under common control with a party hereto and shall include any entity more than fifty percent (50%) of the voting stock or participating profit interest of which is owned or controlled, directly or indirectly, by a party, and any entity which owns or controls, directly or indirectly, more than fifty percent (50%) of the voting stock of a party.

1.2 "AnGes Data" shall mean all data (including, without limitation, clinical trial data), results and information related to the Product which is generated by AnGes or any of its Affiliates or Sublicensees.

1.3 "Asia" shall mean People's Republic of China, Hong Kong, Japan, Republic of Korea, Indonesia, Malaysia, Thailand, Singapore, and Taiwan.

1.4 "Best efforts" shall have the meaning provided in Section 4.3(c).

1.5 "BLA" shall mean a Biologic License Application and all amendments and supplements thereto filed for the Product in melanoma with the FDA.

1.6 "Calendar Quarter" shall mean each respective period of three (3) consecutive months ending on March 31, June 30, September 30 and December 31.

1.7 "Commercial Supply Agreement" shall have the meaning set forth in Section .5.

1.8 "Confidential Information" shall have the meaning provided in Section 10.1.

1.9 "Control" shall mean, with respect to any Information, Patents or other intellectual property rights, possession by a party of the right, power and authority (whether by ownership, license or otherwise) to grant access to, use of or a license or a sublicense to such Information, Patents or intellectual property rights without violating the terms of any agreement or other arrangement with any Third Party.

1.10 "FDA" shall mean the United States Food and Drug Administration, or any successor agency thereto having the administrative authority to regulate the marketing of human pharmaceutical products or biological therapeutic products, delivery systems and devices in the United States.

1.11 "Field" shall mean the treatment and/or prevention of any disease or disorder.

1.12 "Final Stoppage Event" shall mean (a) the withdrawal by the FDA (or other United States governmental or regulatory authority) of authorization for Vical to conduct the Phase 3 Clinical Trial, (b) the occurrence of an adverse reaction or side effect in a human subject due to administration of the Product in the Phase 3 Clinical Trial in accordance with the protocol for such trial, which adverse reaction or side effect is of sufficient magnitude or incidence, in the opinion of the Safety Monitoring Board, to support termination of the Phase 3 Clinical Trial, or (c) the occurrence of any other event that prevents Vical from actively conducting the Phase 3 Clinical Trial, excluding any event that results from AnGes' breach of this Agreement or the Stock Purchase Agreement.

1.13 "First Commercial Sale" shall mean the first sale for end use or consumption of the Product in a country after the governing health regulatory authority of such country has granted Regulatory Approval. Sale to an Affiliate or Sublicensee shall not constitute a First Commercial Sale unless the Affiliate or Sublicensee is the end user of the Product.

1.14 "HHMI" shall have the meaning set forth in Section 5.1(e).

1.15 "HHMI Indemnitees" shall have the meaning set forth in Section 5.1(e).

1.16 "Information" shall mean all tangible and intangible (a) techniques, technology, practices, trade secrets, inventions (whether patentable or not), methods, knowledge, know-how, skill, experience, test data and results (including pharmacological, toxicological and clinical test

data and results), analytical and quality control data, results or descriptions, software and algorithms and (b) compositions of matter, cells, cell lines, assays, animal models and physical, biological or chemical material.

1.17 "Inventions" shall have the meaning provided in Section 8.1.

1.18 "Joint Steering Committee" or **"JSC"** shall mean the committee formed pursuant to Section 2.1.

1.19 "Licensed Patents" shall mean the Michigan-Vical Patent, Vical Patent and WARF-Vical Patent.

1.20 "Michigan" shall mean the Regents of the University of Michigan.

1.21 "Michigan Agreement" shall mean that certain License Agreement between Vical and Michigan, dated February 14, 2006, as amended from time to time, a redacted copy of which has been provided to AnGes.

1.22 "Michigan-Vical Patent" shall mean the Patent licensed to Vical pursuant to the Michigan Agreement and set forth in Part 1 of**Exhibit A**.

1.23 "Net Sales" shall mean the gross amounts invoiced, and if no amount is invoiced, then the amount received, by a party and its Affiliates and Sublicensees, for sales, rentals or leases, however characterized, of the Product to Third Parties that are not Affiliates or Sublicensees of the selling party (unless such Affiliate or Sublicensee is the end user of such Product, in which case the amount billed therefor shall be deemed to be the amount that would be billed to a Third Party end user in an arm's-length transaction), less the following items, as allocable to such Product (if not previously deducted from the amount invoiced): (i) trade or quantity discounts, credits or allowances, in each case actually granted, including, without limitation, discounts provided by means of chargebacks, rebates and administrative fees charged by customers or health care organizations determined based upon sales, but only in amounts customary in the trade; (ii) actual freight or transportation expenses between the selling party or its Affiliate or Sublicensee and customers, to the extent such expenses are not charged to or reimbursed by customers, and shipping, handling and insurance charges actually paid; (iii) sales, use or similar taxes, duties and other governmental tariffs imposed upon particular sales; and (iv) rebates and amounts actually refunded or credited on rejections or returns.

1.24 "Other Territories" shall mean all territories other than Asia and the United States.

1.25 "Patents" shall mean (a) all patents, re-examinations, reissues, renewals, extensions and term restorations, and (b) pending applications for patents, including, without limitation, provisional applications, continuations, continuations-in-part, divisional and substitute applications, including, without limitation, inventors' certificates.

1.26 "Percentage-Based Payments" shall have the meaning provided in Section 6.7.

1.27 "Phase 3 Clinical Trial" shall mean a human clinical trial designed to establish efficacy and safety of the Product in melanoma intended to satisfy United States Regulatory Approval requirements for a Phase 3 study, to be conducted in accordance with the Project Plan.

1.28 "Product" shall mean the purified, sterile bicistronic pDNA that encodes the human major histocompatibility complex (MHC) Class I HLA-B7 protein and beta-2 microglobulin protein on a single plasmid, manufactured as a 2 mg/mL pDNA formulated with the cationic lipid-based system, DMRIE/DOPE and known as the Allovectin-7® Imunotherapeutic. For purposes of the foregoing, DMRIE is (+)-N-(2-hydroxyethyl)-N, N-dimethyl-2,3-bis(tetradecyloxy)-1-propanaminium bromide) and DOPE is 1,2 dioleoyl-sn-glycero-3-phosphoethanolamine.

1.29 "Project" shall mean the conduct of the Phase 3 Clinical Trial and preparation and filing of the first BLA for the Product.

1.30 "Project Data" shall mean all data (including, without limitation, clinical trial data), results and information related to the Product which is generated by Vical or any of its Affiliates or Sublicensees in the performance of the Project.

1.31 "Project Plan" shall mean the plan for conducting the Project, as described in the Special Protocol Assessment for the Product, a copy of which has been provided to AnGes by Vical, as may be amended from time to time.

1.32 "Project Term" shall mean the period beginning on April 1, 2006 and ending upon the filing of the first BLA for the Product, unless terminated earlier as described herein.

1.33 "R&D Payments" shall have the meaning set forth in Section 6.1.

1.34 "Regulatory Approval" shall mean any and all approvals (including price and reimbursement approvals, if required), licenses, registrations, or authorizations of any country, federal, supranational, state or local regulatory agency, department, bureau or other government entity that are necessary for the manufacture, use, storage, import, export, transport and/or sale of the Product in such jurisdiction.

1.35 "Related Data" shall mean all data (including, without limitation, clinical trial data), results and information related to the Product, which is Controlled by Vical as of the Effective Date or during the Project Term, and which is not Project Data but is necessary for Regulatory Approval in Asia.

1.36 "Royalty Term" shall mean, in any country, the period of time commencing on the First Commercial Sale in such country and ending on the later of (a) [***] after the date of First Commercial Sale in such country, and (b) the expiration of the last to expire of the Vical Patent, WARF-Vical Patent or Michigan-Vical Patent, containing a Valid Claim claiming the manufacture, use or sale of Product in such country.

1.37 "Shut Down Costs" shall have the meaning provided in Section 6.2(b)(ii).

1.38 "Stock Purchase Agreement" shall mean that certain Stock Purchase Agreement between the parties, dated as of the Effective Date, as may be amended in accordance with its terms.

1.39 "Sublicensee" shall mean a Third Party that is granted a license or sublicense of the right to develop, make, have made, use, distribute for sale, promote, market, offer for sale, sell, have sold, import or export the Product, beyond the mere right to purchase Product. For clarification, neither AnGes nor any of its Affiliates or Sublicensees shall be a Sublicensee of Vical.

1.40 "Term" shall have the meaning provided in Section 11.1.

1.41 "Third Party" shall mean any entity other than Vical or AnGes or an Affiliate of Vical or AnGes.

1.42 "United States" shall mean the United States of America and its territories and possessions.

1.43 "Valid Claim" shall mean (a) an unexpired claim of an issued patent within the Licensed Patents which has not been found to be unpatentable, invalid or unenforceable by a court or other authority in the subject country, from which decision no appeal is taken or can be taken; or (b) a claim of a pending application within the Licensed Patents.

1.44 "Vical Inventions" shall have the meaning provided in Section 8.1.

1.45 "Vical Know-How" shall mean, to the extent necessary to develop, use, gain Regulatory Approval of, distribute for sale, promote, market, offer for sale, sell, have sold, import or export the Product, Information not included in the Licensed Patents that Vical Controls on the Effective Date or during the Project Term, including, without limitation, (a) all such Information that is related to the Patents listed on Exhibit D, (b) all such Information that is conceived or developed by Vical in the course of and as part of the Project, and, (c) in each case, any replication or any part of any other Information described in this definition of Vical Know-How.

1.46 "Vical Patent" shall mean the Patent set forth in Part 2 of **Exhibit A**.

1.47 "Vical Technology" shall mean the Vical Patent, Vical's ownership interest in the Michigan-Vical Patent (excluding Michigan's interest in the Michigan-Vical Patent), Vical's ownership interest in the WARF-Vical Patent (excluding WARF's interest in the WARF-Vical Patent) and Vical Know-How.

1.48 "WARF" shall mean the Wisconsin Alumni Research Foundation.

1.49 "WARF Agreement" shall mean the License Agreement between Vical and WARF, effective as of January 1, 1991, as amended from time to time, a redacted copy of which is attached as Exhibit C.

1.50 "WARF-Vical Patent" shall mean the Patent exclusively licensed by Vical pursuant to the WARF Agreement and set forth in Part 3 of **Exhibit A.**

2. PROJECT GOVERNANCE

2.1 Joint Steering Committee. Promptly after the Effective Date, the parties will form a Joint Steering Committee comprised of two (2) representatives of each of Vical and AnGes. One (1) member of the JSC selected by Vical shall be selected to act as the chairperson of the JSC. The JSC shall meet at least two (2) times per year during the Project Term, or at such greater frequency as the JSC determines is appropriate. Meetings of the JSC may be conducted by videoconference, teleconference or in person, as agreed by the parties, and the parties shall agree upon the time of meetings. A reasonable number of additional representatives of each party may attend meetings of the JSC. Decisions of the JSC shall be made by consensus of the members of the JSC, except as otherwise expressly stated. Vical shall perform the Phase 3 Clinical Trial in accordance with the decisions of the JSC. Furthermore, Vical shall consider the input of JSC in good faith when making decisions with respect to the remainder of the Project (after Phase 3 Clinical Trail completion and prior to BLA filing). The appointed representatives may change from time to time at the discretion of the represented party.

2.2 Joint Steering Committee Functions and Powers. The responsibilities of the JSC shall be as follows:

(a) encouraging and facilitating communication between the parties with respect to the Project;

(b) annually updating the Project Plan, and reviewing and approving any material changes to it;

(c) approving budget for the Phase 3 Clinical Trial for each calendar year based upon the activities to be conducted under the Project Plan;

(d) reviewing on a quarterly basis the costs against the budget for such expenses and making appropriate adjustments to the budget for the Phase 3 Clinical Trial;

(e) monitoring progress of the Project and related budget;

(f) reviewing marketing and regulatory strategy regarding the Product; and

(g) carrying out any other duties and responsibilities described in this Agreement.

3. CONDUCT OF THE PROJECT

3.1 Objectives. The parties hereby agree that the Project will be conducted by Vical during the Project Term, in accordance with the Project Plan and with the terms of this Agreement.

3.2 Performance of the Project. Vical shall conduct the Project in good scientific manner, and in compliance in all material respects with the requirements of applicable laws and regulations and with applicable good laboratory practices, to attempt to achieve its objectives efficiently and expeditiously. The Project will be conducted in accordance with the budget and timeline provided by Vical to AnGes on May 25, 2006 and as subsequently approved by the JSC. Vical shall maintain laboratories, offices and all other facilities reasonably necessary to carry out the Project. Vical shall prepare and maintain, or shall cause to be prepared and maintained, complete and accurate written records, accounts, notes, reports and data with respect to the Project in accordance with standard pharmaceutical and biotechnology industry practices and the terms and conditions of this Agreement. During the Project Term and for a period of two (2) years after each annual R&D Payment period, Vical shall keep complete and accurate records pertaining to all the costs of research and development activities of Vical and its subcontractors required to complete the Phase 3 Clinical Trial. During the Project Term, Vical shall submit to AnGes an annual report within forty-five (45) days following each calendar year, stating in detail the Project activities during that year. AnGes shall have the right at its own expense to cause an independent, certified public accountant or attorney reasonably acceptable to Vical to audit such records kept pursuant to this section, and shall report to AnGes the findings of such examination relating to the compliance by Vical with the requirements of this Agreement regarding the costs of the Project. In addition, AnGes itself may conduct such an audit. Such audit shall occur during regular business hours and upon reasonable prior notice to Vical.

3.3 Project Reports. Vical shall keep the JSC reasonably informed as to the status of the Project. In particular, Vical shall prepare, and distribute to all members of the JSC no later than seven (7) days prior to the each JSC meeting, a summary of the results and progress for the Project.

3.4 Subcontracts. Vical may perform some of its obligations under the Project Plan, and either party may perform some of its obligations under Section 4 hereof, through one (1) or more subcontractors, provided that (a) none of the rights of either party hereunder are diminished or otherwise adversely affected as a result of such subcontracting, and (b) the subcontractor undertakes in writing obligations of confidentiality and non-use regarding Confidential Information which are consistent with those undertaken by the parties pursuant to Section 10

hereof. In the event a party performs any of such obligations through a subcontractor, then such party will at all times be responsible for the performance and payment of such subcontractor. Additionally, all such subcontractors shall be obligated to enter into a written agreement to assign all of subcontractor's intellectual property rights arising from any such subcontracted work to the party for whom such subcontractor is subcontracting in order to allow such party to grant the rights set forth herein.

4. DEVELOPMENT AND COMMERCIALIZATION OF PRODUCT

4.1 Development and Commercialization of Product by Vical. Subject to the terms and conditions of this Agreement (including, without limitation, Section 4.3(a)), Vical (itself or with its Affiliates and Sublicensees) shall have responsibility for and shall control the development and commercialization of the Product worldwide excluding in Asia.

4.2 Development and Commercialization of Product by AnGes. Subject to the terms and conditions of this Agreement (including, without limitation, Section 4.3(b)), AnGes (itself or with its Affiliates and Sublicensees) shall have responsibility for and shall control the development and commercialization of the Product in Asia.

4.3 Diligence Obligations.

(a) Vical Efforts. Vical shall make best efforts to diligently pursue and complete the Project substantially on the timeline provided to AnGes on May 25, 2006, as may be modified, and shall (itself or through its Affiliates and Sublicensees) use commercially reasonable efforts to commercialize the Product in the United States and in such Other Territories as determined by Vical (or its Affiliates and Sublicensees) based on economic and other relevant considerations. Vical shall keep AnGes regularly informed of the progress of such efforts.

(b) AnGes Efforts. Subject to Vical's receipt of Regulatory Approval for the Product in the United States, AnGes agrees to use commercially reasonable efforts to diligently pursue and obtain Regulatory Approval of the Product and commercialize the Product in Japan and in such other territories in Asia as determined by AnGes (or its Affiliates and Sublicensees) based on economic and other relevant considerations. AnGes shall keep Vical regularly informed of the progress of such efforts.

(c) Best Efforts. The term "best efforts" means, with respect to the development or commercialization of the Product, except as otherwise explicitly set forth in this Agreement, the level of efforts required to carry out such obligation in a manner consistent with the efforts companies in the pharmaceutical industry devote to products of similar market potential, profit potential or strategic value resulting from their own research efforts, based on market conditions then prevailing, consistent with the exercise of prudent scientific and/or business judgment in accordance with generally accepted practices in the pharmaceutical industry. Determination of whether best efforts have been used shall be made without regard to

the particular circumstances of a party, including any other product opportunities of such party. Best efforts requires, with respect to such an obligation, that the party: (a) promptly assign responsibility for such obligation to specific employee(s) who are held accountable for progress and monitor such progress on an on-going basis; (b) set and consistently seek to achieve specific, meaningful and measurable objectives for carrying out such obligation; and (c) consistently make and implement decisions and allocate resources designed to advance progress with respect to such objectives.

4.4 Clinical Supply. Vical will supply the Product to AnGes for use in clinical trials in Asia on the terms attached hereto as **EXHIBIT B** and such other terms as mutually agreed in writing by AnGes and Vical.

4.5 Commercial Supply. The parties will negotiate in good faith a definitive commercial supply agreement (the "Commercial Supply Agreement") pursuant to which Vical will supply the Product to AnGes for commercial sale in Asia. The Commercial Supply Agreement shall be finalized and signed by the parties prior to AnGes or any of its Affiliates or sublicensees making any filings in Asia in support of Regulatory Approval of the Product. The Commercial Supply Agreement shall provide that, with the exception of Product provided by Vical to AnGes for commercial supply in Japan, Product provided by Vical to AnGes for commercial supply in Asia shall be sold by Vical to AnGes at a price equal to the fully-burdened cost of the Product plus [***]. Vical's fully- burdened cost for supplying such Product shall include the cost of raw materials, direct labor plus costs for manufacturing overhead, allocable to the Product based upon actual percentage utilization in terms of time, amount of use and space used of the manufacturing facility in which the Product is manufactured and all determined in accordance with U.S. generally accepted accounting principles. For Japan, the Commercial Supply Agreement shall provide that the cost of Product shall be included in the amounts payable by AnGes to Vical set forth in Section 6.5(a) hereof. If the terms and conditions (in the aggregate) for Vical's commercial supply of Product to Third Party purchasers for commercial sale in Other Territories are more favorable to the Third Party purchaser than the terms and conditions (in the aggregate) of the Commercial Supply Agreement for Asia, those more favorable terms and conditions shall be applied to Vical's sale of commercial supply to AnGes for commercial sale in Asia. If Vical is unable to manufacture sufficient quantities under the Commercial Supply Agreement or if after commercial launch in Asia, substantially better terms (in the aggregate) are available to AnGes, the parties will negotiate in good faith manufacturing rights for AnGes in Asia.

5. LICENSES

5.1 License Grants by Vical

(a) License to Vical Technology. Subject to the terms and conditions of this Agreement, Vical hereby grants to AnGes, during the Term, an exclusive, royalty-bearing

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license, with the right to sublicense as provided in Section 5.3, under the Vical Technology (excluding the Project Data), to develop, use, sell, distribute for sale, offer for sale, have sold, import and export the Product in the Field in Japan.

(b) License to Project Data and Related Data. Subject to the terms and conditions of this Agreement, Vical hereby grants to AnGes, during the Term, an exclusive, royalty-bearing license, with the right to sublicense as provided in Section 5.3, under Vical's rights in the Project Data and any Related Data, to use, make reference to and incorporate the Project Data and Related Data in regulatory filings in Asia for the purpose of obtaining Regulatory Approval of the Product in Asia.

(c) License to WARF-Vical Patent. Subject to the terms and conditions of this Agreement and the WARF Agreement, Vical hereby grants to AnGes, during the Term, an exclusive, royalty-bearing sublicense, with the right to sublicense as provided in Section 5.3, under the WARF-Vical Patent, to develop, use, sell, distribute for sale, offer for sale, have sold, import and export the Product in the Field in Japan.

(d) Continuation of WARF License. AnGes acknowledges that the rights granted by Vical to AnGes under Section 5.1(c) are licensed to Vical by WARF, and such rights are subject to the applicable terms and conditions of the WARF Agreement. In the event that the WARF Agreement is terminated, the rights granted by Vical to AnGes under Section 5.1(c) shall continue as a direct license from WARF to AnGes on the terms set forth in the WARF Agreement, subject to WARF's consent following the signing of this Agreement by Vical and AnGes. AnGes acknowledges that such license provided directly from WARF shall be limited in scope to the license granted under this Agreement. In such event, AnGes agrees to be bound by the terms of the WARF Agreement (including royalty rates, product liability and other rights owing WARF thereunder) as if AnGes were the licensee thereunder instead of Vical.

(e) Michigan-Vical Patent. Subject to the terms and conditions of this Agreement and the Michigan Agreement, Vical hereby grants to AnGes, during the Term, an exclusive, royalty-bearing sublicense, with the right to sublicense as provided in Section 5.3, under the Michigan-Vical Patent, to develop, use, sell, distribute for sale, offer for sale, have sold, import and export the Product in the Field in Japan. In accordance with the terms of the Michigan Agreement, the sublicense granted in this Section 5.1(e), and any further sublicense of such rights by AnGes, will terminate upon the earlier to occur of the termination of the Michigan Agreement or the expiration of the Michigan-Vical Patent, and Vical will provide AnGes with written notice of such termination within thirty (30) days of its receipt of notice thereof; *provided, however,* that, notwithstanding the foregoing, if AnGes so notifies Michigan, within sixty (60) days after AnGes' receipt of notice of such termination, AnGes may elect to continue the license of such rights under the Michigan Agreement subject to the conditions set forth in Section 6.2 of the Michigan Agreement. AnGes acknowledges that the Michigan-Vical Patent was developed, at least in part, by employees of the Howard Hughes Medical Institute (**"HHMI"**) and that HHMI has a paid-up, non-exclusive, irrevocable license to use the Michigan-Vical Patent only for HHMI's research purposes, but with no right to assign or sublicense (the **"HHMI License"**). The sublicense granted pursuant to this Section 5.1(e) is subject to the HHMI License.

5.2 License Grants by AnGes.

(a) License to Project Data. Subject to the terms and conditions of this Agreement, AnGes hereby grants to Vical, an exclusive, royalty-bearing, irrevocable license, with the right to sublicense as provided in Section 5.3, under AnGes' rights in the Project Data, to use, make reference to and incorporate the Project Data in regulatory filings worldwide outside of Asia for the purpose of obtaining Regulatory Approval of the Product worldwide outside of Asia.

(b) License to AnGes Data. Subject to the terms and conditions of this Agreement, AnGes hereby grants to Vical and its Affiliates, during the Term, an exclusive, royalty-free, fully paid license, with the right to sublicense as provided in Section 5.3, to use, make reference to and incorporate the AnGes Data in regulatory filings worldwide outside of Asia for the purpose of obtaining Regulatory Approval of the Product worldwide outside of Asia. AnGes agrees to provide the AnGes Data to Vical periodically as it is generated.

5.3 Sublicense Terms. Each sublicense by a party to an Affiliate or Sublicensee of any rights that have been granted to such party under Section 5.1 or 5.2, as applicable, shall be set forth in a written agreement that binds the Affiliate or Sublicensee to all applicable provisions in this Agreement, including, without limitation, obligations with respect to confidentiality, indemnity, reporting and access to data and information. The party granting the sublicense shall be fully responsible for the compliance of its Affiliates Sublicensees with the terms and conditions of this Agreement (including, without limitation, in the case of any sublicense of rights to the Michigan-Vical Patent or the WARF-Vical Patent, the terms and conditions of the Michigan Agreement or the WARF Agreement, as applicable), and no sublicense shall relieve the sublicensing party of any of its obligations hereunder. Each party will notify the other within fifteen (15) days of the execution of an agreement pursuant to which any rights granted to a party under Section 5.1 or Section 5.2, as applicable, are sublicensed to an Affiliate or Sublicensee. Any such notice will indicate the name of the Affiliate or Sublicensee, the territory of the sublicense, the scope of the sublicense, and the nature, timing and amount of all fees and royalties to be paid thereunder. Upon request by Vical, to the extent any sublicenses granted by AnGes include rights to the Michigan-Vical Patent, AnGes will provide Vical with a copy of such sublicense agreements (provided that confidential information therein that is not required to be provided pursuant to this Section may be redacted), which Vical may provide to Michigan.

5.4 Limitations.

(a) Limitations on AnGes. To the extent not otherwise prohibited by law, AnGes shall not, and shall cause its Affiliates and Sublicensees not to, sell the Product to customers outside Asia or to any Third Party in Asia that AnGes has reasonable grounds to believe is likely to export the Product outside of Asia. If AnGes becomes aware that a Third Party is exporting Products acquired from AnGes or its Affiliate or Sublicensee to a country outside Asia, then AnGes shall use best efforts within its legal rights and the remedies afforded by applicable laws to deter such Third Party from continuing such exportation, including, without limitation by ceasing or limiting the supply of the Product to such Third Party. All

inquiries or orders received by AnGes or its Affiliates or Sublicensees for Products to be delivered outside of Asia shall be referred to Vical.

(b) Limitations on Vical. To the extent not otherwise prohibited by law, Vical shall not, and shall cause its Affiliates and Sublicensees not to, sell the Product to customers within Asia or to any Third Party that Vical has reasonable grounds to believe are likely to import Product into Asia. If Vical becomes aware that a Third Party is exporting Product acquired from Vical or its Affiliate or Sublicensee into Asia, then Vical shall use best efforts within its legal rights and the remedies afforded by applicable laws to deter such Third Party from continuing such exportation, including, without limitation, by ceasing or limiting the supply of the Product to such Third Party. All inquiries or orders received by Vical or its Affiliates or Sublicensees for Products to be distributed within Asia shall be referred to AnGes.

5.5 Retained Rights; No Implied Licenses. For avoidance of doubt, the licenses granted in Section 5.1 shall not in any way be interpreted as granting AnGes a license or sublicense to manufacture or have manufactured the Product, which are reserved to Vical. Vical hereby expressly reserves the right to practice, and to grant licenses under, the Vical Technology, the Product Data, the Michigan-Vical Patent and the WARF-Vical Patent for any and all purposes except to the extent that AnGes has been granted a license or sublicense under Section 5.1. No right or license under any Patents or other intellectual property rights of a party is granted or shall be granted by implication to the other party, and each party agrees not to practice any Patents or other intellectual property rights of the other party except pursuant to the licenses expressly granted in this Agreement or any other written agreement between the parties. All such rights or licenses are or shall be granted only as expressly provided in the terms of this Agreement.

6. FEES AND PAYMENTS

6.1 Research and Development Funding. As described in greater detail below, AnGes agrees to fund the Phase 3 Clinical Trial costs for the Product up to $22,600,000. As noted in Article 4 and except as otherwise set forth herein, Vical will continue to be responsible for Product manufacturing costs and all costs incurred by Vical for development of and filing for Regulatory Approval with respect to the Product in the United States after completion of the Phase 3 Clinical Trial, including BLA preparation and filing. The payments for funding of the Phase 3 Clinical Trial costs will be made by AnGes as set forth in this Section 6.1.

(a) R&D Payments. During the Phase 3 Clinical Trial term and subject to Section 6.2, AnGes shall make non-refundable and non-creditable (except as provided in Section 6.2(a) and 6.2(b)) payments to Vical (each, an **"Installment"** and collectively, the **"R&D Payments"**), all of which shall be used exclusively to pay for or reimburse actual and documented costs of research and development activities of Vical and its subcontractors in performance of the Phase 3 Clinical Trial, in the amounts and at the times set forth below:

(i) On the Effective Date, $6,900,000, pursuant to the Stock Purchase Agreement.

(ii) By no later than [***], [***] in cash.

(iii) By no later than [***], [***] in cash, and by no later than [***], $3,950,000, pursuant to the Stock Purchase Agreement.

(iv) By no later than [***], [***] in cash.

(v) By no later than [***], [***] in cash.

(vi) By no later than [***], [***] in cash.

Notwithstanding the foregoing schedule of Installments, if the Phase 3 Clinical Trial progresses at a faster rate than set forth in the Project Plan, the parties agree to discuss in good faith an acceleration of the schedule of Installments set forth in this Section 6.1(a).

(b) R&D Expenses in Excess of R&D Payments. To the extent that the actual and documented costs of research and development activities of Vical and its subcontractors required to complete the Phase 3 Clinical Trial exceed the estimated aggregate amount of $22,600,000, such excess amounts will be paid by the parties as follows:

(i) Vical will pay the first [***] of such expenses;

(ii) AnGes will pay Vical for the next [***] of such expenses; and

(iii) Vical will pay any such remaining expenses, including manufacturing costs and Phase 4 costs if any.

(c) Right of Negotiation for Other Territories. Vical hereby grants to AnGes a right to negotiate with Vical to fund research and development expenses for clinical trials of the Product conducted by or on behalf of Vical in any of the Other Territories in which human studies in addition to the Phase 3 Clinical Trial are required for Regulatory Approval of the Product therein. To the extent the parties enter into a definitive agreement pursuant to which AnGes agrees to fund any such trials, the parties will negotiate an adjustment to the royalty rate set forth in Section 6.4(b) which shall be applicable to the Other Territories for which AnGes provides such funding.

6.2 R&D Payments Adjustments.

(a) Failure to Meet Minimum Threshold. Each Installment set forth in Section 6.1(a)(ii) through (vi) may be delayed by AnGes, notwithstanding the dates for payment of such Installments as set forth in Section 6.1(a), until such time as the actual costs of activities of Vical and its subcontractors in performance of the Project which were to be paid for using the immediately proceeding Installment are estimated to be at least eighty percent (80%) of the

immediately preceding Installment (the **"Minimum Threshold"**). Vical will provide written confirmation (including supporting documents) prior to each scheduled Installment (other than the first Installment) that the Minimum Threshold has been met with respect to the immediately preceding Installment. AnGes will notify Vical in writing of any decision to delay payment of an Installment pursuant to this Section 6.2(a). Vical shall notify AnGes in writing upon reaching a Minimum Threshold that had previously not been met at the time a subsequent Installment was scheduled, and AnGes will pay the previously delayed Installment to Vical within ten (10) business days after receipt of any such notice. If prior to the end of the Project, the then-current budget of total costs for the Phase 3 Clinical Trial (the "Revised Phase 3 Clinical Trial Costs") is estimated to be less than $22,600,000, the last Installment will be reduced by the amount by which the Revised Phase 3 Clinical Trial Costs are below $22,600,000. If the actual costs of activities of Vical and its subcontractors in performance of the Phase 3 Clinical Trial exceed the Revised Phase 3 Clinical Trial Costs, Vical shall notify AnGes in writing and AnGes will pay Vical such excess up to the original amount of $22,600,000 within 30 days of such notification.

(b) Final Stoppage Event. Upon the occurrence of a Final Stoppage Event, AnGes' obligation to pay to Vical any Installments not yet due and payable as of such date shall terminate. In addition, upon the occurrence of a Final Stoppage Event, Vical shall return to AnGes all unused amounts comprising R&D Payments paid to Vical, other than Installments made pursuant to the Stock Purchase Agreement in Sections 6.1(a)(i) and (iii) hereof. Notwithstanding the foregoing, any such Installments that would otherwise be returned to AnGes pursuant to the preceding sentence may be reduced by Vical by the amount equal to fifty percent (50%) of the costs incurred by Vical and its Affiliates to wind down the Project (the **"Shut Down Costs"**). In the event that the unused amounts are insufficient to cover fifty percent (50%) of the Shut Down Costs, Vical may invoice AnGes for any such deficient amount, and AnGes will pay such amounts within thirty (30) days of date of invoice. Shut Down Costs to be borne by AnGes shall not exceed $1,000,000. Notwithstanding the foregoing, Vical may not apply amounts that would otherwise be returned to AnGes hereunder toward the Shut Down Costs, or otherwise require AnGes to pay for fifty percent (50%) of the Shut Down Costs, to the extent that Vical's gross negligence or willful misconduct is the direct cause of the Final Stoppage Event.

6.3 Milestone Payments. Within thirty (30) days following the first occurrence of aggregate invoiced sales of the Product in Asia by AnGes and its Affiliates and Sublicensees reaching each amount set forth below in any period of up to twelve (12) months, AnGes shall pay to Vical the corresponding milestone payment set forth below:

Aggregate Invoiced Sales in Asia	Milestone Payment
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]
[***]	[***]

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Each of the milestone payments described in this Section 6.3 shall be payable one (1) time. Sales shall be counted toward each aggregate invoiced amount described above once. Once invoiced sales reach a given threshold, a new period for counting aggregate invoiced sales shall begin. For example, if aggregate invoiced sales of the Product in Asia equal [***] during a three (3) month period, the milestone payment of [***] would be due and a new period would begin, not to exceed twelve (12) months, in which sales would be aggregated for purposes of this Section 6.3. Upon additional sales of [***] (not including the initial [***] counted with respect to the initial milestone payment) within any subsequent twelve (12) month (or shorter) period, the milestone payment of [***] would be due. All payments made to Vical pursuant to this Section 6.3 are non-refundable and may not be credited against any other payments payable by AnGes to Vical under this Agreement. For purposes of calculating aggregate invoiced sales of the Product in Asia, sales in any currency other that U.S. dollars shall be converted into U.S. dollars at an exchange rate determined in the same manner as described in Section 7.2.

6.4 Royalties Due From Vical.

(a) Sales in the United States. Vical shall pay to AnGes royalties on Net Sales of the Product by Vical and its Affiliates and Sublicensees in the United States at the following rates:

(i) [***] of that portion of total annual Net Sales of the Product in the United States that is less than or equal to [***];

(ii) [***] of that portion of total annual Net Sales of the Product in the United States that is greater than [***] and less than or equal to [***];

(iii) [***] of that portion of total annual Net Sales of the Product that is greater than [***] and less than or equal to [***];

(iv) [***] of that portion of total annual Net Sales of the Product that is greater than [***] and less than or equal to [***];

(v) [***] of that portion of total annual Net Sales of the Product that is greater than [***] and less than or equal to [***]; and

(vi) [***] of that portion of total annual Net Sales of the Product that is greater than [***].

(b) Sales in the Other Territories. Vical shall pay to AnGes a royalty of [***] of annual Net Sales of the Product by Vical and its Affiliates and Sublicensees in the Other Territories.

(c) Minimum Royalty Payment. Notwithstanding Sections 6.4(a) and 6.4(b), beginning with the second full year after the First Commercial Sale by Vical or its Affiliate or Sublicensee in the United States, if the Regulatory Approval of the Product covers

the first line use of the Product in the indication of Stage 3 and Stage 4 (M1a and M1b) melanoma patients, then the minimum annual royalty payments by Vical to AnGes pursuant to this Section 6.4(a) and 6.4(b) shall be [***], subject to reduction pursuant to Section 6.6, so that, if the total royalty payments made by Vical under Section 6.4(a) and 6.4(b) for any such calendar year is less than [***], Vical shall pay AnGes the amount by which [***] exceeds the total royalty payments made by Vical under Sections 6.4(a)and 6.4(b) at the time that the last payment for such calendar year is made to AnGes.

6.5 Royalties Due From AnGes.

(a) Sales in Japan. AnGes shall pay to Vical a royalty of [***] of annual Net Sales of the Product by AnGes and its Affiliates and Sublicensees in Japan, which royalty shall include the transfer price for the Product supplied by Vical for Japan under the Commercial Supply Agreement.

(b) Sales in Asia, Other than Japan. AnGes shall pay to Vical a royalty of [***] of annual Net Sales of the Product by AnGes and its Affiliates and Sublicensees in Asia, other than in Japan. In addition to this royalty, AnGes shall pay for Product in accordance with the pricing and terms of the Commercial Supply Agreement.

6.6 Reduction for Generics. To the extent that, during the Royalty Term, a generic version of the Product is legally available in a given country, through no fault of the party that would otherwise be paying Percentage-Based Payments in such country, and such generic version possesses at least [***] of the market share for the Product in such country in any Calendar Quarter based on market data provided by such party to the other party, then the royalties otherwise due under Section 6.4 or 6.5, as applicable, with respect to sales of the Product by such party and its Affiliates and Sublicensees in such country shall be reduced by [***] during the period when such generic is available.

6.7 Royalty Term. The payments specified in Sections 6.4 and 6.5 (collectively, ***"Percentage-Based Payments"***) shall be payable on a country-by-country basis for a period equal to the Royalty Term in such country.

6.8 Non-Arms' Length Transactions. If AnGes or Vical, or their respective Affiliates or Sublicensees, sell the Product to any entity or person controlled by, controlling, or under common control with such party, at a price less than the price charged to Third Parties, the royalties payable hereunder with respect to such sale shall be computed on the basis of the price charged to independent third parties in an arms' length transaction. Solely for purposes of this Section 6.10, "control" shall mean the direct or indirect ownership of more than 30% of the

voting stock or other ownership interests of that entity, or the power, directly or indirectly, to cause the direction of the management and policies of such entity.

7. PAYMENT; RECORDS; AUDITS

7.1 Payment; Reports. Percentage-Based Payments shall be calculated and reported for each Calendar Quarter. All payments due under this Agreement shall be paid within forty-five (45) days after the end of each Calendar Quarter. Each Percentage-Based Payment shall be accompanied by a report of Net Sales of Products in sufficient detail to permit confirmation of the accuracy of the payment made, including, without limitation and on a country-by-country basis, the number of Products sold, leased or distributed, the gross sales and Net Sales of such Products, the deductions applicable as provided in the definition of Net Sales, the method used to calculate the Percentage-Based Payments, and the exchange rates used. Each party shall keep, and shall cause its Affiliates and Sublicensees to keep, complete and accurate records pertaining to the sale or other disposition of Products in sufficient detail to permit the other party to confirm the accuracy of all payments due hereunder.

7.2 Exchange Rate; Manner and Place of Payment. All references to dollars and "$" herein shall refer to United States dollars. All payments hereunder shall be payable in United States dollars. When conversion of payments from any foreign currency is required, such conversion shall be at the arithmetic average of the daily exchange rates for the Calendar Quarter in which the obligation to pay was incurred, as reported in *The Wall Street Journal*, West Coast U.S. Edition. If *The Wall Street Journal* no longer publishes exchange rates, Vical shall notify AnGes of the New York, NY bank to be relied upon for exchange rates. All payments owed under this Agreement shall be made by wire transfer in immediately available funds to a bank and account designated in writing by the applicable party, unless otherwise specified in writing by such party.

7.3 Income Tax Withholding. Each party will pay any and all taxes levied on account of any payments made to such party under this Agreement. If any taxes are required to be withheld by a party from payments made to the other party hereunder, such withholding party will (a) deduct such taxes from the payment being made, (b) timely pay the taxes to the proper taxing authority, and (c) send proof of payment to the other party and certify its receipt by the taxing authority within thirty (30) days following such payment. Notwithstanding the foregoing, in no event will any amounts otherwise payable by AnGes to Vical pursuant to Section 6.1 hereof be reduced from the amounts set forth in Section 6.1 as the result of deduction of taxes or otherwise.

7.4 Audits. During the Term and for a period of six (6) years after each Percentage-Based Payment, each party shall keep (and shall cause its Affiliates and Sublicensees to keep) complete and accurate records pertaining to the sale or other disposition of the Product in sufficient detail to permit the other party to confirm the accuracy of all Percentage-Based Payments due hereunder. Each party, as well as Michigan and/or WARF, shall have the right to cause an independent, certified public accountant or attorney reasonably acceptable to the other party to audit such records of such other party to confirm Net Sales, Percentage-Based Payments and other payments for a period covering not more than the preceding six (6) years. In addition, each of WARF (for three (3) years) and Michigan (for six (6) years) themselves may conduct

such an audit. Such audits may be exercised during normal business hours upon a minimum of sixty (60) days' prior written notice to the party to be audited, but no more frequently than once per year. In connection with any such audit required by WARF, WARF or its agent shall be entitled to make and retain copies of records reviewed in such audit. Prompt adjustments shall be made by the parties to reflect the results of such audit. The party requesting the audit, or Michigan or WARF if applicable, shall bear the full cost of such audit unless such audit discloses an underpayment by the audited party of more than five percent (5%) of the amount of Percentage-Based Payments or other payments due under this Agreement, in which case, the audited party shall bear the full cost of such audit and shall promptly, and in any event within twenty-one (21) days of written notice of such underpayment, remit to the party requesting the audit the amount of any underpayment plus interest as described in Section 7.6.

7.5 Blocked Currency. Even if the local currency in a particular country is blocked and cannot be removed from the country, royalties accrued for sales of Product in that country shall nonetheless be paid in United States dollars.

7.6 Late Payments. In the event that any payment due under this Agreement is not made when due, the payment shall accrue interest from the date due at the rate of one percent (1.0%) per month; *provided, however*, that in no event shall such rate exceed the maximum legal annual interest rate in the United States and Japan. The payment of such interest shall not limit a party from exercising any other rights it may have as a consequence of the lateness of any payment.

8. INTELLECTUAL PROPERTY

8.1 Ownership.

(a) Inventions. Inventorship of inventions conceived of and reduced to practice in the course of performance of the Project (***"Inventions"***) shall be determined in accordance with the rules of inventorship under United States patent laws. Vical shall own all Inventions conceived of and reduced to practice by its employees and contractors (***"Vical Inventions"***), and all Patents claiming any Vical Inventions, which shall be included in the Vical Patents.

(b) Project Data. Vical hereby assigns to AnGes such rights Vical has or may acquire in the Project Data as necessary so that Vical and AnGes are joint owners of the Project Data. The parties agree not to take any action, or omit to take any action, that diminishes the rights or interests of the other party in the Project Data without the written consent of such other party.

8.2 Patent Prosecution and Maintenance. Subject to the WARF Agreement and the Michigan Agreement, Vical shall be responsible for the preparation, filing, prosecution and maintenance of the Licensed Patents. Vical shall be responsible for expenses related thereto, provided that to the extent a claim is brought that challenges or seeks to invalidate a Licensed Patent, to the extent the claim is related to the Product or, if resolved adversely would affect the Product, AnGes shall pay for [***] of such expenses, but which in no case will exceed [***] per claim or action. Vical shall keep AnGes reasonably informed of progress with regard to the preparation, filing, prosecution and maintenance of Licensed Patents in Asia. Vical shall consider in good faith the requests and suggestions of AnGes with respect to strategies for filing and prosecuting such Patents in Asia.

8.3 Infringement by Third Parties. Vical and AnGes shall promptly notify the other in writing of any alleged or threatened infringement of any Licensed Patent of which they become aware that would have a material adverse effect on the Product. Both parties shall use their best efforts in cooperating with each other to terminate such infringement without litigation, as appropriate. Vical shall have the sole right, as between Vical and AnGes, to bring and control any action or proceeding with respect to infringement of any Licensed Patent, and AnGes shall have the right, at its own expense, to be represented in any such action, involving any alleged or threatened infringement of any Licensed Patent in Asia that would have a material adverse effect on the Product, by counsel of AnGes' own choice. With respect to expenses incurred by Vical in connection with such an action or proceeding in Asia, AnGes shall pay for [***] of such expenses, but which in no case will exceed [***] per action or proceeding. Vical will bear all other expenses for such action or proceeding. Any recovery realized as a result of such litigation, after reimbursement of any litigation expenses of the parties, shall be divided pro-rata according to payment of expenses by Vical and AnGes.

8.4 Infringement of Third Party Rights. Each party shall promptly notify the other in writing of any allegation by a Third Party that the activity of either of the parties pursuant to this Agreement infringes or may infringe the intellectual property rights of such Third Party. Vical shall have the sole right to control any defense of any such claim involving alleged infringement of Third Party rights by Vical's activities at its own expense and by counsel of its own choice, and AnGes shall have the right, at its own expense, to be represented in any such action by counsel of its own choice. AnGes shall have the sole right to control any defense of any such claim involving alleged infringement of Third Party rights by AnGes' activities at its own expense and by counsel of its own choice, and Vical shall have the right, at its own expense, to be represented in any such action by counsel of its own choice. Neither party shall have the right to settle any patent infringement litigation under this Section 8.4 in a manner that diminishes the rights or interests of the other party without the written consent of such other party (which shall not be unreasonably withheld or delayed).

8.5 Patent Marking. AnGes, and its Affiliates and Sublicensees, shall apply patent markings that meet the requirements of United States or other applicable law with respect to the Product. All Product sold in other countries by AnGes and its Affiliates and Sublicensees shall be marked to comply with the patent laws and practices of the countries of manufacture, use and sale.

9. REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties. Each party represents and warrants to the other party as of the Effective Date that: (a) it is duly organized and validly existing under the laws of its jurisdiction of incorporation or formation and has full corporate or other power and authority to enter into this Agreement and to carry out the provisions hereof; (b) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder, and the person or persons executing this Agreement on its behalf has been duly authorized to do so by all requisite corporate action; and (c) this Agreement is legally binding upon it, enforceable in accordance with its terms and does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.

9.2 Vical Representations and Warranties. Vical represents and warrants to AnGes that, as of the Effective Date:

(a) Vical has the right to grant the licenses contemplated under this Agreement.

(b) Vical has received no written notice of alleged infringement of any issued patent asserted by any Third Party in relation to the Product.

(c) To Vical's knowledge, there is no actual or threatened infringement of any Licensed Patents in relation to the Product.

(d) No claim or action has been brought or, to Vical's knowledge, threatened by any person alleging, that the Licensed Patents are invalid or unenforceable.

(e) The Michigan Agreement and the WARF Agreement are in full force and effect and Vical is not in material breach of the Michigan Agreement or the WARF Agreement.

9.3 Performance by Affiliates. The parties recognize that each may perform some or all of its obligations under this Agreement through Affiliates, *provided, however,* that each party shall remain responsible and be guarantor of the performance by its Affiliates and shall cause its Affiliates to comply with the provisions of this Agreement in connection with such performance. In particular, if any Affiliate of a party participates in research and development activities under this Agreement or with respect to the Product, (a) the restrictions of this Agreement which apply to the activities of a party with respect to the Product shall apply equally to the activities of such Affiliate, and (b) the party affiliated with such Affiliate shall assure, and hereby guarantees, that any intellectual property and data developed by such Affiliate shall be

governed by the provisions of this Agreement as if such intellectual property and data had been developed by the party.

9.4 Disclaimer. Except as expressly set forth herein, THE TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS PROVIDED BY EACH PARTY HEREUNDER ARE PROVIDED "AS IS" AND EACH PARTY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES, IN ALL CASES WITH RESPECT THERETO. Without limiting the generality of the foregoing, each party expressly does not warrant (a) the success of any study or test commenced under the Project or (b) the safety or usefulness for any purpose of the technology it provides hereunder.

9.5 Limitation of Liability. EXCEPT FOR PAYMENTS UNDER SECTION 6 OR LIABILITY FOR BREACH OF SECTION 10, NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE GRANTED HEREUNDER; *provided, however,* that this Section 9.5 shall not be construed to limit either party's indemnification obligations under Section 12. AnGes acknowledges the disclaimer of warranty and limitation on Michigan's liability set forth in Section 9 of the Michigan Agreement, and agrees not to make, and to require its Affiliates and Sublicensees not to make, any statements, representations or warranties whatsoever to any person or entity, or accept any liabilities or responsibilities whatsoever from any person or entity that are inconsistent with any disclaimer or limitation included in Section 9 of the Michigan Agreement.

10. CONFIDENTIALITY

10.1 Confidential Information. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the parties, the parties agree that, during the Term and for seven (7) years thereafter, the receiving party shall keep confidential and shall not publish or otherwise disclose and shall not use for any purpose other than as expressly provided for in this Agreement any Information furnished to it by the other party pursuant to this Agreement (collectively, ***"Confidential Information"***). Each party may use such Confidential Information of the other party only to the extent required to accomplish the purposes of this Agreement. Each party will use at least the same standard of care as it uses to protect proprietary or confidential information of its own (and in any event no less than reasonable care) to ensure that its employees, agents, consultants and other representatives do not disclose or make any unauthorized use of the Confidential Information of the other party. Each party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information of the other party.

10.2 Exceptions. Confidential Information shall not include any information which the receiving party can prove by competent written evidence: (a) is now, or hereafter becomes generally known or available, through no act or failure to act on the part of the receiving party; (b) is known by the receiving party at the time of receiving such information, as evidenced by its written records; (c) is hereafter furnished to the receiving party by a Third Party, as a matter of right and without restriction on disclosure; or (d) is independently discovered or developed by the receiving party without the use of Confidential Information belonging to the disclosing party.

10.3 Authorized Disclosure. Each party may disclose Confidential Information belonging to the other party to the extent such disclosure is the subject of a written permission to disclose provided by the disclosing party or is reasonably necessary in the following instances:

(a) filing or prosecuting Patents as permitted by this Agreement;

(b) making regulatory filings for the Product in territories in which such party has a license or right hereunder;

(c) prosecuting or defending litigation as permitted by this Agreement;

(d) complying with applicable court orders or governmental regulations;

(e) disclosure to Affiliates, Sublicensees, employees, consultants, subcontractors and agents to the extent required to accomplish the purposes of this Agreement, provided, in each case, that any such Affiliate, Sublicensee, employee, consultant, subcontractor or agent agrees in writing to be bound by similar terms of confidentiality and non-use at least equivalent in scope to those set forth in this Section 10; and

(f) disclosure to potential Sublicensees or other Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors in confidential financing documents, provided, in each case, that any such Sublicensee or other Third Party agrees in writing to be bound by similar terms of confidentiality and non-use at least equivalent in scope to those set forth in this Section 10.

Notwithstanding the foregoing, in the event a party is required to make a disclosure of the other party's Confidential Information pursuant to Section 10.3(c) or (d), it will, except where impracticable, give reasonable advance notice to the other party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder. The parties will consult with each other on the provisions of this Agreement to be redacted in any filings made by the parties with the U.S. Securities and Exchange Commission or as otherwise required by law.

10.4 Publicity. It is understood that the parties intend to issue a joint press release announcing the execution of this Agreement and agree that each party may desire or be required

to issue subsequent press releases relating to the Agreement or activities hereunder. The parties agree to consult with each other reasonably and in good faith with respect to the text and timing of such press releases prior to the issuance thereof, provided that a party may not unreasonably withhold consent to such releases, and that either party may issue such press releases or make such disclosure with the appropriate regulatory authority (including, without limitation, filing of a Form 8-K with the U.S. Securities and Exchange Commission) as it determines, based on advice of counsel, are reasonably necessary to comply with laws or regulations or for appropriate market disclosure. In addition, following the initial joint press release announcing this Agreement, either party shall be free to disclose, without the other party's prior written consent, the existence of this Agreement, the identity of the other party and those terms of the Agreement which have already been publicly disclosed in accordance herewith.

10.5 Use of Names.

(a) WARF. AnGes agrees, and shall require its Affiliates and Sublicensees to agree, to refrain from using WARF's name, the name of any University of Wisconsin inventor of inventions covered by the WARF-Vical Patent, or the name of the University of Wisconsin, in sale, promotion, advertising, or any other form of publicity without the prior written approval of the entity or person whose name is being used.

(b) Michigan. AnGes agrees, and shall require its Affiliates and Sublicensees to agree, to refrain from using the names of Michigan or HHMI, or their respective insignia, in publicity or advertising without the prior written approval of Michigan or HHMI, as the case may be. Notwithstanding the foregoing, without the prior written approval of Michigan, AnGes and its Affiliates and Sublicensees may state publicly and privately that the Product was developed jointly by Vical and Michigan.

11. TERM AND TERMINATION

11.1 Term. The term of the Project shall commence on the Effective Date and continue until expiration of the Project Term, unless this Agreement is earlier terminated pursuant to Section 11.2, 11.3 or 11.4. The term of this Agreement (the ***"Term"***) shall commence on the Effective Date and continue until the expiration of the last Royalty Term for the Product, unless earlier terminated pursuant to Section 11.2, 11.3 or 11.4.

11.2 Termination for Cause.

(a) Termination By Either Party. Each party shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to the other party upon or after the breach of any material provision of this Agreement by such other party (ten (10) days' prior written notice in the event of a payment breach) if the breaching party has not cured such breach within the thirty (30)-day period (ten (10)-day period in the event of a payment breach) following written notice of termination by the non-breaching party. In the case of a breach of any material provision of this Agreement other than a payment breach, if such breach cannot be cured within the sixty (60) day cure period, this Agreement shall not terminate if the breaching

party has made diligent efforts to cure such breach within the sixty (60) day period and this Agreement shall remain in effect for such period after notice of breach as may be reasonable in the circumstances as long as the breaching party continues to use diligent efforts to pursue the cure with a reasonable expectation that cure will be effected as promptly as practicable thereafter. In the event the parties in good faith dispute the existence of a breach of a material provision of this Agreement or a party's diligence in attempting to cure such a breach (other than a payment breach), termination of this Agreement shall not be deemed to occur unless and until such dispute has been referred for resolution in accordance with Section 13.1 hereof, breach of a material provision of this Agreement or failure to make diligent efforts to cure such breach has been established by an arbitration thereunder and, if such breach can be cured by the payment of money or the taking of specific remedial actions, the breaching party does not pay the amount so determined to be due within ten (10) days of receipt of the arbitration decision or otherwise diligently undertake and complete such remedial actions within the timeframe established by such arbitration decision.

(b) Termination Due to Financial Duress. If at any time during the Term which is at least six (6) months prior to the due date of any payment from AnGes to Vical pursuant to Section 6.1(a), AnGes' cash and cash equivalents fall below [***], AnGes may notify Vical in writing of such fact, referencing this Section 11.2(b) and providing data showing AnGes' financial position. The parties shall, within thirty (30) days after such notice from AnGes, discuss in good faith AnGes' ability to make the next payment. To the extent that AnGes' cash and cash equivalents remain below [***] for at least the three (3) months prior to the date the next payment is due from AnGes to Vical pursuant to Section 6.1(a), and to the extent AnGes has complied with the requirements of the foregoing sentences, AnGes may terminate this Agreement upon thirty (30) days' written notice to Vical, which such notice must be provided at least thirty (30) days prior to the due date for such payment. In the event of such a termination, on the due date for such payment AnGes will provide data to Vical showing AnGes' financial position as of such date.

(c) Bankruptcy. A party may terminate this Agreement if, during the Term, the other party shall file a petition in bankruptcy or insolvency or for reorganization or for an arrangement or for the appointment of a receiver or trustee of such other party or of its assets, and such petition shall not be dismissed or withdrawn within ninety (90) days after the filing thereof.

11.3 Termination Due to Final Stoppage Event. Either party may terminate this Agreement upon thirty (30) days' prior written notice following the occurrence of a Final Stoppage Event.

11.4 Effect of Termination; Surviving Obligations.

(a) Upon termination of this Agreement by either party pursuant to Section 11.2:

(i) all rights under the licenses granted under Sections 5.1 shall automatically terminate and revert to the granting party;

(ii) all other rights and obligations of the parties under the Agreement shall terminate, except as provided in this Section 11.4;

(iii) in the case of a termination by AnGes pursuant to Section 11.2(a) or 11.2(b), AnGes' right to payment from Vical pursuant to Section 6.4 shall survive, however any payments AnGes would otherwise receive thereunder shall be reduced pro rata based on the percentage of cash R&D Payments (not to include payments which were or would have been, if made, paid in exchange for stock pursuant to the Stock Purchase Agreement, or which were returned pursuant to Section 11.4(a)(v), if applicable) that AnGes failed to pay to Vical, based on an aggregate of [***] possible cash payments;

(iv) AnGes shall, and hereby does, assign to Vical such rights as AnGes has or may acquire in the Project Data as necessary to convey sole ownership of the Project Data and the AnGes Data to Vical (and, effective upon such assignment, the license granted in Section 5.2(a) shall be extinguished);

(v) in the case of a termination by AnGes pursuant to Section 11.2(b), Vical shall return to AnGes cash R&D Payments (not to include payments which were paid in exchange for stock pursuant to the Stock Purchase Agreement) received from AnGes but not yet spent according the then-current budget as of the date of termination. Such monies shall be returned within thirty (30) days of the date of termination; and

(vi) in the case of termination by AnGes pursuant to Sections 11.2(a) and 11.2(c), the Project shall terminate, and Vical will provide to AnGes a copy of such Project Data and Related Data that exists as of the time of such termination. As a result, all obligations of Vical and AnGes in relation to the Project under Article 3, as well as its diligence obligation with respect to the Project under Sections 4.3(a) and 4.3(b), shall terminate, and the obligations of AnGes and Vical under Sections 6.1 and 6.2 shall terminate. All other rights and obligations of the parties, including, without limitation, the licenses granted to AnGes under Section 5.1 and the payment obligations in Sections 6.3, 6.5, 6.6, 6.7, 6.8 and 7 (but excluding Section 6.4, which is addressed in Section 11.4(a)(iii) above), shall continue in accordance with the terms of this Agreement.

(b) Upon termination of this Agreement by either party pursuant to Section 11.3:

(i) all rights under the licenses granted under Sections 5.1 and 5.2 shall automatically terminate and revert to the granting party; and

(ii) all other rights and obligations of the parties under the Agreement shall terminate, except as provided in this Section 11.4.

(c) Expiration or termination of this Agreement shall not relieve the parties of any obligation accruing prior to such expiration or termination. The obligations and rights of the parties under Sections 1, 5.2, 7.4, 8.1, 9.4, 9.5, 10.1, 10.2, 10.3, 10.4, 10.5, 11.4, 11.5, 11.6, 11.7, 12 and 13 of this Agreement shall survive expiration or termination of this Agreement.

(d) Within thirty (30) days following the expiration or termination of this Agreement, each party shall deliver to the other party any and all Confidential Information of the other party in its possession.

11.5 Exercise of Right to Terminate. The use by either party hereto of a termination right provided for under this Agreement shall not by itself give rise to the payment of damages or any other form of compensation or relief to the other party with respect thereto.

11.6 Damages; Relief. Subject to Section 11.5 above, termination of this Agreement shall not preclude either party from claiming any other damages, compensation or relief that it may be entitled to upon such termination.

11.7 Rights in Bankruptcy. All rights and licenses granted under or pursuant to this Agreement by Vical or AnGes are, and will otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code or other applicable bankruptcy law, licenses of right to "intellectual property" as defined under Section 101 of the U.S. Bankruptcy Code or other applicable bankruptcy law. The parties agree that the parties, as licensees of such rights under this Agreement, will retain and may fully exercise all of their rights and elections under the U.S. Bankruptcy Code or other applicable bankruptcy law. The parties further agree that, in the event of the commencement of a bankruptcy proceeding-by or against either party under the U.S. Bankruptcy Code or other applicable bankruptcy law, the party hereto that is not a party to such proceeding will be entitled to a complete duplicate of (or complete access to, as appropriate) any such intellectual property and all embodiments of such intellectual property, and same, if not already in their possession, will be promptly delivered to them (a) upon any such commencement of a bankruptcy proceeding upon their written request therefor, unless the party subject to such proceeding elects to continue to perform all of its obligations under this Agreement, or (b) if not delivered under (a) above, following the rejection of this Agreement by or on behalf of the party subject to such proceeding upon written request therefor by the non-subject party.

12. INDEMNIFICATION

12.1 Indemnification by Vical. Vical hereby agrees to save, defend and hold AnGes and its Affiliates and their respective directors, officers, employees and agents (each, an ***"AnGes Indemnitee"***) harmless from and against any and all claims, suits, actions, demands, liabilities, expenses and/or loss, including reasonable legal expense and attorneys' fees (collectively, ***"Losses"***), to which any AnGes Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such Losses arise directly or indirectly out of the development, use, sale, offer for sale, import, export or other disposition of

the Product by Vical, its Affiliates or Sublicensees (or on their behalf by their respective employees, consultants, contractors or agents) worldwide, excluding Asia; except to the extent such Losses result from the gross negligence or willful misconduct of any AnGes Indemnitee or the breach by AnGes of any warranty, representation, covenant or agreement made by AnGes in this Agreement.

12.2 Indemnification by AnGes. AnGes hereby agrees to save, defend and hold Vical and its Affiliates and their respective directors, officers, employees and agents (each, a ***"Vical Indemnitee"***) harmless from and against any and all Losses to which any Vical Indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such Losses arise directly or indirectly out of the use, handling, storage, sale, offer for sale, import, export or other disposition of any Product by AnGes, its Affiliates or Sublicensees (or on their behalf by their respective employees, consultants, contractors or agents) in Asia; except to the extent such Losses result from the gross negligence or willful misconduct of any Vical Indemnitee or the breach by Vical of any warranty, representation, covenant or agreement made by Vical in this Agreement.

12.3 Control of Defense. Any person or entity entitled to indemnification under this Section 12 shall give notice to the indemnifying party of any Losses that may be subject to indemnification, promptly after learning of such Losses, and the indemnifying party shall assume the defense of such Losses with counsel reasonably satisfactory to the indemnified person or entity. If such defense is assumed by the indemnifying party with counsel so selected, the indemnifying party will not be subject to any liability for any settlement of such Losses made by the indemnified person or entity without its consent (but such consent will not be unreasonably withheld or delayed), and will not be obligated to pay the fees and expenses of any separate counsel retained by the indemnified person or entity with respect to such Losses.

12.4 Insurance. Vical, at its own expense, shall maintain commercial general liability insurance and product liability insurance (or self-insure) in an amount consistent with industry standards during the Term and shall name AnGes as an additional insured with respect to such insurance. AnGes, at its own expense, shall maintain commercial general liability insurance and product liability insurance (or self-insure) in an amount consistent with industry standards, beginning prior to initiation by AnGes of any development of the Product in Asia and continuing during the Term, and shall name Vical as an additional insured with respect to such insurance, as well as Michigan and its Regents, fellows, officers and employees, and HHMI Indemnitees. AnGes' insurance shall protect HHMI and Michigan with respect to events covered in Section 12.5 hereof. Each party shall provide a certificate of insurance (or evidence of self-insurance) evidencing such coverage to the other party upon request.

12.5 Indemnification of Michigan and HHMI. Subject to the applicable terms and conditions set forth in Section 10 of the Michigan Agreement:

(a) AnGes shall, and shall require its Sublicensees to, defend, indemnify and hold harmless Michigan, including its Regents, fellows, officers, employees, students and agents (together, "**HHMI Indemnitees**") for and against any and all claims, demands, damages, losses

and expenses of any nature (including attorneys' fees and other litigation expenses), resulting from, but not limited to, death, personal injury, illness, property damage, economic loss or products liability arising from or in connection with any of the following: (a) any manufacture, use, sale or other disposition by AnGes or transferees of Product; (b) the direct or indirect use by any person of Product made, used, sold or otherwise distributed by AnGes; and (c) the use or practice by AnGes of any invention within the Michigan-Vical Patent.

(b) AnGes shall, and shall require its Sublicensees to, indemnify, defend by counsel acceptable to HHMI, and hold harmless, HHMI and its trustees, officers, employees and agents from and against any claim, liability, cost, expense, damage, deficiency, loss or obligation, of any kind or nature (including without limitation reasonable attorney's fees and other costs and expenses of defense) based upon, arising out of or otherwise relating to the Michigan Agreement, including without limitation any cause of action relating to product liability.

(c) AnGes shall, and shall require its Sublicensees to, comply with all applicable laws and regulations with regard to its activities under this Agreement. In particular, AnGes understands and acknowledges that the transfer of certain goods and technology subject to this Agreement are subject to export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls. AnGes shall not, and shall prohibit its Sublicensees from, without prior U.S. government authorization, export, re-export, or transfer of any goods or technology subject to this Agreement, either directly or indirectly, to any country subject to a U.S. trade embargo (currently Cuba, Iran, Libya, North Korea, Sudan, and Syria) or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury. These laws and regulations prohibit, or require a license for, the export of such commodities and technical data to certain specified countries. AnGes agrees to comply with all United States laws and regulations controlling the export of commodities and technical data, to be solely responsible for any violation of such laws and regulations by AnGes or its Sublicensees, and to defend, indemnify and hold harmless Michigan, its Regents, fellows, officers, employees and agents if any legal action of any nature results from the violation by AnGes or its Sublicensees as a result of their respective activities under this Agreement.

12.6 Indemnification of WARF. In accordance with the WARF Agreement, AnGes agrees to defend and hold WARF and the inventors of the WARF-Vical Patent and the providers of any materials useful in connection with practicing this license (if provided on behalf of WARF) harmless against any judgments, fees, reasonable attorney fees, reasonable expenses, or other reasonable costs arising from or incidental to any product liability or any other lawsuit brought as a consequence of the practice of the inventions of the WARF-Vical Patent by AnGes (or its Sublicensees) or the use of Patents by AnGes (or its Sublicensees) of the Product by them or others, whether or not WARF or any one or more of the inventors is named as a party defendant in any such lawsuit as long as such judgments, fees, reasonable attorney fees,

reasonable expenses or other reasonable costs do not arise solely from the negligence, recklessness or willful misconduct of WARF, any inventors of the WARF-Vical Patent or the providers of the materials.

13. GENERAL PROVISIONS

13.1 Dispute Resolution. In the event of any controversy or claim arising out of, relating to or in connection with any provision of this Agreement, the parties shall try to settle their differences amicably between themselves first, by referring the disputed matter to the Chief Executive Officer of AnGes and the Chief Executive Officer of Vical. Either party may initiate such informal dispute resolution by sending written notice of the dispute to the other party, and, within twenty (20) days after such notice, such representatives of the parties shall meet for attempted resolution by good faith negotiations. If the representatives of the parties have not been able to resolve the dispute within fifteen (15) business days after such mediation hearing, then any and all claims, disputes or controversies arising under, out of, or in connection with this Agreement (excluding any antitrust, anti-competition or patent enforcement or validity matter), shall be resolved by final and binding compulsory arbitration in a neutral location agreed to by the parties pursuant to and in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall be conducted by a panel of three (3) persons experienced in the pharmaceutical industry, none of whom shall be a current or former employee or director, or a then-current stockholder, of either party, their respective Affiliates or any Sublicensee. Within thirty (30) days after receipt of the original notice of binding arbitration, each party shall select one (1) person to act as arbitrator and the two (2) party-selected arbitrators shall select a third arbitrator within ten (10) business days of their appointment. Either party may apply to the arbitrators for interim injunctive relief until the arbitrators have rendered their decision or the controversy is otherwise resolved. Either party may also, without waiving any remedy under this Agreement, seek from any court having jurisdiction any injunctive or provisional relief necessary to protect the rights or property of that party pending the arbitrators' decision. The arbitrators shall have no power to add to, subtract from or modify any of the terms or conditions of this Agreement, nor to award punitive damages. Any award rendered in such arbitration may be enforced by either party in any court having jurisdiction. Each party shall bear its own costs and expenses and attorneys' fees and an equal share of the arbitrators' fees and any administrative fees of arbitration, provided that the arbitrators shall be authorized to determine whether a party is the prevailing party, and if so, to award to that prevailing party reimbursement for its reasonable costs and expenses, including reasonable attorneys' fees, in connection with arbitration of such controversy or claim. By agreeing to this binding arbitration provision, the parties understand that they are waiving certain rights and protections which may otherwise be available if a dispute between the parties were determined by litigation in court, including, without limitation, the right to seek or obtain certain types of damages precluded by this provision, the right to a jury trial and certain rights of appeal.

13.2 Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding its conflicts of laws principles.

13.3 Entire Agreement; Modification. This Agreement is both a final expression of the parties' agreement and a complete and exclusive statement with respect to all of its terms. This Agreement, together with that certain Confidential Disclosure Agreement between the parties dated June 8, 2005, to the extent not in conflict herewith, supersedes all prior and contemporaneous agreements and communications, whether oral, written or otherwise, concerning any and all matters contained herein. No rights or licenses with respect to any intellectual property of either party are granted or deemed granted hereunder or in connection herewith, other than those rights expressly granted in this Agreement. This Agreement may only be modified or supplemented in a writing expressly stated for such purpose and signed by the parties to this Agreement.

13.4 Relationship Between the Parties. The parties' relationship, as established by this Agreement, is solely that of independent contractors. This Agreement does not create any partnership, joint venture or similar business relationship between the parties. Neither party is a legal representative of the other party, and neither party can assume or create any obligation, representation, warranty or guarantee, express or implied, on behalf of the other party for any purpose whatsoever.

13.5 Non-Waiver. The failure of a party to insist upon strict performance of any provision of this Agreement or to exercise any right arising out of this Agreement shall neither impair that provision or right nor constitute a waiver of that provision or right, in whole or in part, in that instance or in any other instance. Any waiver by a party of a particular provision or right shall be in writing, shall be as to a particular matter and, if applicable, for a particular period of time and shall be signed by such party.

13.6 Assignment. Except as expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party; *provided, however*, that either party may assign this Agreement and its rights and obligations hereunder without the other party's consent:

(a) in connection with the transfer or sale of all or substantially all of the business of such party to which this Agreement relates to a Third Party, whether by merger, sale of stock, sale of assets or otherwise; provided that, in the event of such a transaction (whether this Agreement is actually assigned or is assumed by the acquiring Party by operation of law (*e.g.*, in the context of a reverse triangular merger)), intellectual property rights of the acquiring party to such transaction (if other than one of the parties to this Agreement) shall not be included in the technology licensed hereunder; or

(b) to an Affiliate, provided that the assigning party shall remain liable and responsible to the non-assigning party hereto for the performance and observance of all such duties and obligations by such Affiliate.

The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

13.7 No Third Party Beneficiaries. This Agreement is neither expressly nor impliedly made for the benefit of any party other than those executing it other than HHMI, Michigan and WARF, which may enforce the provisions of this Agreement which are for the benefit of HHMI, Michigan and WARF, respectively.

13.8 Severability. If, for any reason, any part of this Agreement is adjudicated invalid, unenforceable or illegal by a court of competent jurisdiction, such adjudication shall not affect or impair, in whole or in part, the validity, enforceability or legality of any remaining portions of this Agreement. All remaining portions shall remain in full force and effect as if the original Agreement had been executed without the invalidated, unenforceable or illegal part.

13.9 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earliest of: (a) the date of actual receipt; (b) if mailed, seven (7) days after the date of postmark; or (c) if delivered by overnight courier, the second business day the overnight courier regularly makes deliveries.

If to AnGes, notices must be addressed to:

AnGes MG, Inc.
5F, Mitasuzuki Bldg, 5-20-14
Shiba, Minato-ku, Tokyo, 108-0014
Japan
Attention: General Counsel
Telephone: 81-3-5730-2489
Facsimile: 81-3-5730-2635

If to Vical, notices must be addressed to:

Vical Incorporated
10390 Pacific Center Court
San Diego, CA 92121
Attention: Vice President, Business Development
Telephone: (858) 646-1144
Facsimile: (858) 334-1450

13.10 Force Majeure. Except for the obligation to make payment when due, each party shall be excused from liability for the failure or delay in performance of any obligation under this Agreement by reason of any event beyond such party's reasonable control including but not limited to Acts of God, fire, flood, explosion, earthquake, or other natural forces, war, civil unrest, accident, destruction or other casualty, any lack or failure of transportation facilities, any lack or failure of supply of raw materials, any strike or labor disturbance, or any other event

similar to those enumerated above. Such excuse from liability shall be effective only to the extent and duration of the event(s) causing the failure or delay in performance and provided that the party has not caused such event(s) to occur. Notice of a party's failure or delay in performance due to force majeure must be given to the other party within ten (10) days after its occurrence. All delivery dates under this Agreement that have been affected by force majeure shall be tolled for the duration of such force majeure.

13.11 Interpretation.

(a) Captions & Headings. The captions and headings of clauses contained in this Agreement preceding the text of the articles, sections, subsections and paragraphs hereof are inserted solely for convenience and ease of reference only and shall not constitute any part of this Agreement, or have any effect on its interpretation or construction.

(b) Singular & Plural. All references in this Agreement to the singular shall include the plural where applicable, and all references to gender shall include both genders and the neuter.

(c) Articles, Sections & Subsections. Unless otherwise specified, references in this Agreement to any Section shall include all sections, subsections, and paragraphs in such article; references in this Agreement to any section shall include all subsections and paragraphs in such sections; and references in this Agreement to any subsection shall include all paragraphs in such subsection.

(d) Days. All references to days in this Agreement shall mean calendar days, unless otherwise specified.

(e) Ambiguities. Ambiguities and uncertainties in this Agreement, if any, shall not be interpreted against either party, irrespective of which party may be deemed to have caused the ambiguity or uncertainty to exist.

(f) English Language. This Agreement has been prepared in the English language and the English language shall control its interpretation. In addition, all notices required or permitted to be given hereunder, and all written, electronic, oral or other communications between the parties regarding this Agreement shall be in the English language.

13.12 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original document, and all of which, together with this writing, shall be deemed one instrument.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have duly executed this **RESEARCH AND DEVELOPMENT AGREEMENT** as of the Effective Date.

VICAL INCORPORATED	**ANGES MG, INC.**
By: /s/ Jill M. Church	By: /s/ Ei Yamada
Name: Jill M. Church	Name: Ei Yamada
Title: Chief Financial Officer	Title: President and CEO
Date: 25 May, 2006	Date: 25 May, 2006

Exhibit A

Licensed Patents

Part 1 – Michigan-Vical Patent

[***]	[***]

Part 2 – Vical Patent

[***]	[***]

Part 3 – WARF-Vical Patent

[***]	[***]

*** Confidential Treatment Requested

Exhibit B

Clinical Supply Terms

- AnGes shall pay Vical for Product supplied for use in clinical trials at a price equal to Vical's fully-burdened cost for supplying such Product, including, without limitation, materials costs, labor costs, variance from standard costs, write-offs for Product that cannot be used, plus an appropriate share of costs for overhead, determined in accordance with Vical's accounting practices for other products manufactured in the applicable facility.
- All Product supplied by Vical to AnGes for purposes of AnGes and its Affiliates and Sublicensees conducting clinical trials (the "Clinical Supply") will be used only in furtherance of obtaining Regulatory Approval with respect to the Product in Asia, and will be used in compliance with all applicable laws, rules and regulations.
- Product release and acceptance terms shall be determined in accordance with applicable industry standards.
- AnGes shall be entitled to appropriate audit rights with respect to the manufacturing facility utilized by Vical to enable AnGes to comply with applicable regulatory requirements.
- AnGes will provide Vical with at least six (6) months prior notice of the quantities required and ship date for Clinical Supply to be provided by Vical. Providing that such notice is given, AnGes will receive supply priority in the case of a manufacturing short-fall.
- Vical agrees to sell to AnGes Clinical Supply as follows: individually vialed, sterile final drug product. Labeling of vials will be done in consultation with AnGes, however vials will be labeled "for investigational use only" or the equivalent instructions in the appropriate language for the country of investigational use.
- All Clinical Supply shall be sent from Vical's manufacturing site FCA (Incoterms 2000). AnGes will arrange for and pay all costs associated with insuring and shipping Clinical Supply (including, without limitation, packaging for overseas shipment in refrigerated conditions). AnGes or its Sublicensee will be responsible for all import clearance activities related to Clinical Supply.
- AnGes or its Sublicensee shall save, defend and hold Vical and its Affiliates and their respective directors, officers, employees and agents harmless from and against any and all Losses to which any such indemnitee may become subject as a result of any claim, demand, action or other proceeding by any Third Party to the extent such losses arise directly or indirectly out of: (i) the use, handling, storage or other disposition of Clinical Supply sold to AnGes; or (ii) the breach by AnGes or its Sublicensee of any warranty,

representation, covenant or agreement made by AnGes in the agreement covering the provision of the Clinical Supply to AnGes, except, in each case, to the extent such Losses result from the negligence or willful misconduct of Vical or the breach by Vical of any material warranty, representation, covenant or agreement made by Vical in such agreement. AnGes shall, and shall require its Sublicensees, at their own expense, to maintain appropriate general liability and product liability insurance with respect to their activities involving the Clinical Supply in an amount consistent with industry standards.

Exhibit C

WARF Agreement

Exhibit D

[***]

Exhibit 10.51

*****Text Omitted and Filed Separately with the Securities and Exchange Commission. Confidential Treatment Requested Under 17 C.F.R. Sections 200.80(b)(4) and 240.24b-2.**

STOCK PURCHASE AGREEMENT

THIS STOCK PURCHASE AGREEMENT (this ***"Agreement"***) is made as of May 25, 2006 (the ***"Effective Date"***), by and between **VICAL INCORPORATED**, a Delaware corporation (the ***"Company"***), having its principal place of business at 10390 Pacific Center Court, San Diego, California 92121, USA, and AnGes MG Inc., a Japanese corporation (the ***"Purchaser"***), having its principal place of business at 7-7-15 Saito-Asagi, Ibaraki, Osaka, 567-0085, Japan.

WHEREAS, the Company and the Purchaser have entered into that certain Research and Development Agreement of even date herewith (the ***"R&D Agreement"***); and

WHEREAS, in connection with the R&D Agreement, the Company wishes to sell to the Purchaser, and Purchaser wishes to purchase from the Company, shares of the Company's common stock, par value $0.01 per share (***"Common Stock"***), on the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Company and the Purchaser hereby agree as follows:

1. DEFINITIONS

Capitalized terms used but not defined herein shall have the meanings provided in the R&D Agreement. In addition, the following terms shall have the respective meanings set forth below:

1.1 ***"Acquisition Transaction"*** shall have the meaning set forth in Section 10.2(g).

1.2 ***"Adjusted Share Amount"*** shall have the meaning set forth in Section 2.2(b).

1.3 ***"Affiliate"*** shall mean any entity controlled by, controlling, or under common control with a party hereto and shall include any entity more than 50% of the voting stock or participating profit interest of which is owned or controlled, directly or indirectly, by a party, and any entity which owns or controls, directly or indirectly, more than 50% of the voting stock of a party.

1.4 ***"Closing"*** shall refer to either the Initial Closing or the Milestone Closing, as applicable.

1.5 ***"Closing Date"*** shall refer to either the Initial Closing Date or the Milestone Closing Date, as applicable.

1.6 ***"Company Securities"*** shall have the meaning set forth in Section 10.1.

1.7 ***"Excess Amount"*** shall have the meaning set forth in Section 2.2(b).

1.8 ***"Exchange Act"*** shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

1.9 "HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

1.10 ***"Indemnitee"*** shall have the meaning set forth in Section 8.4(c).

1.11 ***"Indemnitor"*** shall have the meaning set forth in Section 8.4(c).

1.12 ***"Initial Closing"*** shall mean the closing of the sale and purchase of the Initial Shares.

1.13 ***"Initial Closing Date"*** shall mean the Effective Date or such other date or time as the Company and the Purchaser may mutually agree.

1.14 ***"Initial Shares"*** shall mean the number of shares of Common Stock (rounded down to the nearest whole number) equal to the quotient of $6,900,000 divided by the Initial Share Price.

1.15 ***"Initial Share Price"*** shall mean the lesser of the volume weighted average trading price per share of Common Stock for the 30 trading days ending on the second trading day immediately preceding the Initial Closing Date as reported on the Nasdaq National Market or $6.50 per share of Common Stock.

1.16 ***"Milestone Closing"*** shall mean the closing of the sale and purchase of the Milestone Shares.

1.17 ***"Milestone Closing Date"*** shall mean the later of (a) [***] and (b) [***] or such other date or time as the Company and the Purchaser may agree in writing.

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1.18 ***"Milestone Share Cap"*** shall mean the number of whole shares of Common Stock equal to 19.99% of the number of shares of Common Stock outstanding as of the Milestone Closing Date after giving effect to the Shares to be purchased under Section 2.2(b).

1.19 ***"Milestone Share Price"*** shall mean the volume weighted average trading price per share of Common Stock for the 30 trading days ending on the second trading day immediately preceding the Milestone Closing Date as reported on the Nasdaq National Market or such other national securities exchange or market on which the shares of Common Stock are then traded or quoted; provided that, if shares of Common Stock are not traded on any recognized exchange or market, the Milestone Share Price shall be the fair market value of one share of Common Stock as determined in good faith by the Company's Board of Directors, which good faith determination shall include a discount for illiquidity from the value that would otherwise be determined if the shares of Common Stock were listed on a recognized exchange or market.

1.20 ***"Milestone Shares"*** shall mean the number of shares of Common Stock (rounded down to the nearest whole number) equal to the quotient of $3,950,000 divided by the Milestone Share Price, as may be adjusted pursuant to Section 2.2(b).

1.21 ***"Person"*** shall mean any natural person, corporation, limited liability company, general or limited partnership, limited liability partnership, joint venture, joint stock company, trust, unincorporated organization, association, sole proprietorship, governmental body, or agency or political subdivision of any government.

1.22 ***"Registrable Shares"*** shall mean the Shares; *provided, however*, that Shares shall only be treated as Registrable Securities if and only for so long as they (a) have not been disposed of pursuant to a registration statement declared effective by the SEC, (b) have not been sold in a transaction exempt from the registration and prospectus delivery requirements of the Securities Act so that all transfer restrictions and restrictive legends with respect thereto are removed upon the consummation of such sale and (c) are held by the Purchaser, an Affiliate of the Purchaser or any other person or entity to whom the rights under Article 6 have been transferred in accordance with Section 8.9.

1.23 ***"Registration Expenses"*** shall mean all expenses incurred by the Company in complying with Sections 8.1 and 8.2 hereof, including, without limitation, all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements of counsel to the Company, blue sky fees and expenses, the expense of any special audits incident to or required by any such registration and the fees and disbursements of counsel to the Purchaser (up to a maximum of $25,000 for such fees and disbursements), but excluding all underwriting discounts and selling commissions in an applicable sale of Registrable Shares.

1.24 ***"Registration Statement"*** shall mean a registration statement filed by the Company with the SEC to register Registrable Shares on Form S-3 under the Securities Act or on

such other form which is appropriate to register such Registrable Shares for resale from time to time by the Purchaser.

1.25 ***"Restricted Transaction"*** shall have the meaning set forth in Section 10.1.

1.26 ***"SEC"*** shall mean the United States Securities and Exchange Commission.

1.27 ***"SEC Filings"*** shall mean all reports, schedules, forms, statements and other documents filed or required to be filed by the Company with the SEC pursuant to the requirements of the Securities Act or the Exchange Act, including material filed pursuant to Section 13(a) or 15(c) of the Exchange Act, in each case, together with all exhibits, supplements, amendments and schedules thereto, and all documents incorporated by reference therein.

1.28 ***"Securities Act"*** shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

1.29 ***"Shares"*** shall mean the shares of Common Stock being purchased under this Agreement.

1.30 ***"Suspension Period"*** shall have the meaning set forth in Section 8.2(b).

2. AGREEMENT TO SELL AND PURCHASE.

2.1 Authorization of Shares. The Company has authorized the sale and issuance to the Purchaser of the Shares under the terms and conditions of this Agreement.

2.2 Sale and Purchase. Subject to the terms and conditions hereof:

(a) Initial Shares. At the Initial Closing, the Company hereby agrees to issue and sell to the Purchaser, and the Purchaser agrees to purchase from the Company, the Initial Shares at a price per share equal to the Initial Share Price.

(b) Milestone Shares. At the Milestone Closing, the Company hereby agrees to issue and sell to the Purchaser, and the Purchaser agrees to purchase from the Company, the Milestone Shares at a price per share equal to the Milestone Share Price; *provided*, *however,* that if (i) the sum of the Milestone Shares plus the Initial Shares would exceed the Milestone Share Cap or (ii) the Company is required to, but has not, obtained any stockholder approval required to comply with Nasdaq rules or a similar rule for any portion of the Milestone Shares to be sold on the Milestone Closing Date, then the number of Shares to be purchased under this Section 2.2(b) shall be adjusted (the "***Adjusted Share Amount***"). In the case that Section 2.2(b)(i) applies, the Adjusted Share Amount shall be the number of Shares that, when added to the Initial Shares, equals the Milestone Share Cap. In the case that Section 2.2(b)(ii) applies, the Adjusted Share Amount shall be the number of Shares that the Company may sell to the Purchaser without being required to obtain such stockholder approval. If the Purchaser is required to purchase an Adjusted Share Amount pursuant to this Section 2.2(b), then the

Purchaser's obligation to purchase that portion (the ***"Excess Portion"***) of the Milestone Shares in excess of the Adjusted Share Amount shall be suspended for six months to allow the Company, if the Company so desires, to seek and obtain any required stockholder approval. If the Company has not obtained such stockholder approval within six months after the Milestone Closing Date, then upon the expiration of such six months, the Purchaser shall be permanently relieved of any obligation to purchase the Excess Portion. In no event will the Company be required to sell or issue any portion of the Milestone Shares on the Milestone Closing Date for which stockholder approval is required in order to comply with Nasdaq Stock Market Marketplace Rules (or similar stockholder voting requirements that may be imposed on the Company by any other established stock exchange or national market system on which shares of Common Stock are traded or listed), unless and until the Company has obtained such stockholder approval.

3. CLOSING, DELIVERY AND PAYMENT.

3.1 Initial Closing. The Initial Closing shall take place on the Initial Closing Date at the offices of Cooley Godward LLP, 4401 Eastgate Mall, San Diego, CA, 92121 or at such other place as the Company and the Purchaser may agree in writing.

3.2 Milestone Closing. Provided that a Final Stoppage Event has not occurred prior to the Milestone Closing Date, the Milestone Closing shall take place on the Milestone Closing Date at the offices of Cooley Godward LLP, 4401 Eastgate Mall, San Diego, CA, 92121 or at such other place as the Company and the Purchaser may agree in writing. For purposes of clarification, the Company's obligation to offer and sell, and the Purchaser's obligation to purchase, the Milestone Shares shall terminate if a Final Stoppage Event occurs prior to the Milestone Closing Date or if the R&D Agreement is terminated in accordance with its terms prior to the Milestone Closing Date. Notwithstanding the foregoing, if United States securities laws or SEC regulations so require, Vical shall be entitled to delay the Milestone Closing for up to six (6) months.

3.3 Delivery. At each Closing, subject to the terms and conditions hereof, the Company shall deliver to the Purchaser a certificate or certificates registered in the name of the Purchaser, and/or in such nominee name(s) as designated in writing by the Purchaser, representing the number of Shares to be purchased at such Closing by the Purchaser, against payment of the purchase price therefor by wire transfer made payable to the order of the Company.

4. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE COMPANY.

The Company hereby represents and warrants to the Purchaser as of the Effective Date as follows:

4.1 Representations in the R&D Agreement. The provisions of Sections 9.2 and 9.4 of the R&D Agreement are hereby incorporated by reference into this Agreement.

4.2 Organization, Good Standing and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business. The Company is duly qualified to transact business as a corporation and is in good standing in each jurisdiction in which the failure so to qualify would have a material adverse effect upon the Company's ability to perform its obligations under this Agreement.

4.3 Authorization; Due Execution. The Company has the requisite corporate power and authority to enter into this Agreement and to perform its obligations under the terms of this Agreement. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement has been taken. This Agreement has been duly authorized, executed and delivered by the Company and, upon due execution and delivery by the Purchaser of this Agreement, this Agreement will be a valid and binding obligation of the Company, enforceable in accordance with its terms, except (a) as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles or (b) to the extent that the enforceability of the indemnification provisions set forth in Section 8.4 hereof may be limited by applicable laws.

4.4 Valid Issuance of Stock. The Shares, when issued, sold and delivered in accordance with the terms of Sections 2 and 3 hereof for the consideration and on the terms and conditions set forth herein, will be duly and validly authorized and issued, fully paid and nonassessable and, based in part upon the representations of the Purchaser in this Agreement, will be issued in compliance with all applicable federal and state securities laws.

4.5 No Defaults. There exists no default under the provisions of any instrument or agreement evidencing, governing or otherwise relating to any material indebtedness of the Company, or with respect to any other agreement, a default under which could have a material adverse effect upon the Company's ability to perform its obligations under this Agreement.

4.6 SEC Filings. The Company has timely filed with the SEC all SEC Filings. The SEC Filings were prepared in accordance with and, as of the date on which each such SEC Filing was filed with the SEC, complied in all material respects with the applicable requirements of the Exchange Act. None of such SEC Filings, including, without limitation, any financial statements, exhibits and schedules included therein and documents incorporated therein by reference, at the time filed, declared effective or mailed, as the case may be, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

4.7 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state, local or provincial governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except for such approvals or

consents as may be required under the HSR Act and such other notices required or permitted to be filed with certain state and federal securities commissions after the Effective Date, which notices will be filed on a timely basis.

4.8 No Conflict. The Company's execution, delivery and performance of this Agreement does not violate any provision of the Company's Restated Certificate of Incorporation or Bylaws, each as amended as of the date hereof (copies of which have been filed with the Company's SEC Filings), any provision of any order, writ, judgment, injunction, decree, determination or award to which the Company is a party or by which it is bound, or, to the Company's knowledge, any law, rule or regulation currently in effect having applicability to the Company.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE PURCHASER.

The Purchaser hereby makes the following representations and warranties to the Company:

5.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporate and has all requisite corporate power and authority to carry on its business.

5.2 Authorization; Due Execution. The Purchaser has the requisite corporate power and authority to enter into this Agreement and to perform its obligations under the terms of this Agreement. All corporate action on the part of the Purchaser, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement have been taken. This Agreement has been duly authorized, executed and delivered by the Purchaser, and, upon due execution and delivery by the Company, this Agreement will be a valid and binding obligation of the Purchaser, enforceable in accordance with its terms, except (a) as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles or (b) to the extent that the enforceability of the indemnification provisions set forth in Section 8.4 hereof may be limited by applicable laws.

5.3 No Current Ownership in the Company. Other than the Shares to be acquired, and the rights provided for, under this Agreement, the Purchaser does not own any shares of Common Stock or any rights to acquire Common Stock.

5.4 Purchase Entirely for Own Account. This Agreement is made with the Purchaser in reliance upon the Purchaser's representation to the Company, which by the Purchaser's execution of this Agreement it hereby confirms, that the Shares purchased by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that it does not have any

contract, undertaking, agreement or arrangement with any person to sell, transfer or grant participation to such person or to any third party, with respect to the Shares, if issued.

5.5 Disclosure of Information. The Purchaser has received all the information that it has requested and that it considers necessary or appropriate for deciding whether to enter into this Agreement and to acquire the Shares. The Purchaser further represents that it has had an opportunity to ask questions and receive answers from the Company regarding the terms and conditions of the offering of the Shares. Section 5.5 is not intended to limit in any respect the representations and warranties made by Vical in Section 4.6.

5.6 Investment Experience. The Purchaser is an investor in securities of companies in the development stage and acknowledges that it is able to fend for itself, can bear the economic risk of its investment and has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Shares. The Purchaser also represents it has not been organized solely for the purpose of acquiring the Shares.

5.7 Accredited Investor. The Purchaser is an "accredited investor" as such term is defined in Rule 501 of the General Rules and Regulations promulgated by the SEC pursuant to the Securities Act.

5.8 Restricted Securities. The Purchaser understands that:

(a) the Shares will not be registered under the Securities Act by reason of a specific exemption therefrom, that such securities must be held by it indefinitely and that the Purchaser must, therefore, bear the economic risk of such investment indefinitely, unless a subsequent disposition thereof is registered under the Securities Act or is exempt from such registration;

(b) each certificate representing the Shares, if issued, will be endorsed with the following legends:

(i) THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (THE "*ACT*") AND MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, ASSIGNED, PLEDGED OR HYPOTHECATED UNLESS AND UNTIL REGISTERED UNDER THE ACT OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED; and

(ii) Any legend required to be placed thereon under applicable state securities laws.

(c) The Company will instruct its transfer agent not to register the transfer of the Shares (or any portion thereof) unless the conditions specified in the foregoing legends are satisfied, until such time as a transfer is made, pursuant to the terms of this Agreement, and in compliance with Rule 144 under the Securities Act (***"Rule 144"***) or pursuant to a registration statement or, if the opinion of counsel referred to above is to the further effect that such legend is not required in order to establish compliance with any provisions of the Securities Act or this Agreement.

5.9 No Short Sales. The Purchaser has not engaged, and will not engage, in any short sales of the Company's Common Stock within the [***] trading days prior to the date on which a Closing Date is scheduled under the R&D Agreement.

5.10 No Legal, Tax or Investment Advice. The Purchaser understands that nothing in the SEC Filings, this Agreement or any other materials presented to the Purchaser in connection with the purchase and sale of the Shares constitutes legal, tax or investment advice and that independent legal counsel has reviewed these documents and materials on the Purchaser's behalf. The Purchaser has consulted such legal, tax and investment advisors as it, in its sole discretion, has deemed necessary or appropriate in connection with its purchase of the Shares.

6. CONDITIONS TO THE COMPANY'S OBLIGATIONS AT CLOSING.

6.1 Initial Closing. The Company's obligation to sell, issue and deliver the Initial Shares to the Purchaser at the Initial Closing shall be subject to the following conditions to the extent not waived by the Company:

(a) Receipt of Payment. The Company shall have received payment in full, by wire transfer of immediately available funds, for the Initial Shares at the Initial Share Price.

(b) R&D Agreement. The R&D Agreement shall have been executed and delivered by the Purchaser.

(c) Representations and Warranties; Obligations. The representations and warranties made by the Purchaser in Section 5 hereof shall be true and correct on the Initial Closing Date. The Purchaser shall have performed and complied with all obligations and conditions required to be performed and complied with by the Purchaser under this Agreement on or prior to the Initial Closing Date.

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(d) HSR Act. Any waiting period applicable to the consummation of the issuance and sale of the Shares to the Purchaser on the Initial Closing Date or to the R&D Agreement under the HSR Act shall have expired or been terminated.

6.2 Milestone Closing. The Company's obligation to sell, issue and deliver the Milestone Shares to the Purchaser at the Milestone Closing shall be subject to the following conditions to the extent not waived by the Company:

(a) Receipt of Payment. The Company shall have received payment in full, by wire transfer of immediately available funds, for the Milestone Shares at the Milestone Share Price.

(b) R&D Agreement. The R&D Agreement shall be in full force and effect as of the Milestone Closing Date.

(c) HSR Act. Any waiting period applicable to the consummation of the issuance and sale of the Shares to the Purchaser on the Milestone Closing Date or to the R&D Agreement under the HSR Act shall have expired or been terminated.

(d) Required Stockholder Approval. Solely with respect to the sale of any portion of the Shares issuable on the Milestone Closing Date for which stockholder approval is required in order to comply with Nasdaq Stock Market Marketplace Rules (or similar stockholder voting requirements that may be imposed on the Company by any other established stock exchange or national market system on which shares of Common Stock are traded or listed), the Company shall have obtained such stockholder approval.

7. CONDITIONS TO THE PURCHASERS' OBLIGATIONS AT CLOSING.

7.1 Initial Closing. The Purchaser's obligation to accept delivery of and pay for the Initial Shares at the Initial Closing shall be subject to the following conditions to the extent not waived by the Purchaser:

(a) Representations and Warranties; Obligations. The representations and warranties made by the Company in Section 4 hereof shall be true and correct on the Initial Closing Date. The Company shall have performed and complied with all obligations and conditions to be performed and complied with by the Company under this Agreement on or prior to the Initial Closing Date.

(b) R&D Agreement. The R&D Agreement shall have been executed and delivered by the Company and the Purchaser.

(c) HSR Act. Any waiting period applicable to the consummation of the issuance and sale of the Shares to the Purchaser on the Initial Closing Date or to the R&D Agreement under the HSR Act shall have expired or been terminated.

7.2 Milestone Closing. The Purchaser's obligation to accept delivery of and pay for the Milestone Shares at the Milestone Closing shall be subject to the following conditions to the extent not waived by the Purchaser:

(a) Representations and Warranties; Obligations. The representations and warranties made by the Company in Section 4 hereof shall be true and correct in all material respects on the Milestone Closing Date as if made on such date; *provided, however,* that the Company shall deliver to the Purchaser an officer's certificate updating as of a reasonably recent date prior to the Milestone Closing Date the representations and warranties made by the Company in Section 4 hereof, which shall be true and correct in all material respects on and as of the Milestone Closing Date. The Company shall have performed and complied with all obligations and conditions to be performed and complied with by the Company under this Agreement and the R&D Agreement on or prior to the Milestone Closing Date.

(b) R&D Agreement. The R&D Agreement shall be in full force and effect as of the Milestone Closing Date.

(c) HSR Act. Any waiting period applicable to the consummation of the issuance and sale of the Shares to the Purchaser on the Milestone Closing Date or to the R&D Agreement under the HSR Act shall have expired or been terminated.

8. REGISTRATION RIGHTS.

8.1 Registration of Shares.

(a) At any time that the Purchaser is entitled to sell or transfer any Shares pursuant to Section 9 hereof, the Purchaser may request, in writing, that the Company effect the registration for resale of Registrable Shares pursuant to a Registration Statement. Thereupon, the Company shall, as expeditiously as possible, use its best efforts to effect the registration for resale of all such Registrable Shares. If the Purchaser intends to distribute the Registrable Shares by means of an underwriting, it shall so advise the Company in its request.

(b) The Company shall not be required to effect more than one registration pursuant to this Section 8.1. If the Company has filed a registration statement within six months of the proposed date of filing of the applicable Registration Statement, the Company shall not be obligated to file a Registration Statement until after the end of such six month period.

(c) If at the time of any request to register Registrable Shares pursuant to this Section 8.1, the Company is engaged in any activity which, in the good faith determination of the Company's Board of Directors, would be adversely affected by the requested registration to the material detriment of the Company, then the Company may at its option direct that such request

be delayed for a period not in excess of three months from the effective date of such offering or the date of commencement of such other material activity, as the case may be, such right to delay a given request may not be exercised by the Company more than once in any one-year period.

8.2 Registration Procedures. If and whenever the Company is required by the provisions of this Agreement to use its best efforts to effect the registration of any of the Registrable Shares under the Securities Act, the Company shall do the following:

(a) The Company shall file with the SEC a Registration Statement with respect to such Registrable Shares within 30 days after receiving such request and use its best efforts to cause that Registration Statement to become effective as soon as is reasonably possible.

(b) The Company shall as expeditiously as possible prepare and file with the SEC any amendments and supplements to the Registration Statement and the prospectus included in the Registration Statement and such SEC Filings and other filings required by the SEC, in each case, as may be necessary to keep the Registration Statement effective, in the case of a firm commitment underwritten public offering, until each underwriter has completed the distribution of all securities purchased by it and, in the case of any other offering, until the earlier of the sale of all Registrable Shares covered thereby or such time as all of the Registrable Shares held by the Purchaser that are registered under such Registration Statement can be sold pursuant to Rule 144(k) or within a given three-month period pursuant to Rule 144. Notwithstanding the foregoing, if, at any time following the effectiveness of a Registration Statement, the Company shall have determined that the Company may be required to disclose any material corporate development, the Company may suspend the effectiveness of a Registration Statement until such time as an amendment to such Registration Statement has been filed by the Company and declared effective by the SEC or until such time as the Company has filed an appropriate report with the SEC pursuant to the Exchange Act, by giving notice to the Purchaser. The Company will use its best efforts to limit the length of any period of suspension of a Registration Statements to a reasonable period of time (which shall in no event be longer than 90 days or such longer period of time as is required, due to circumstances outside of the Company's control, such as a delay by the SEC) (a ***"Suspension Period"***), and further, the Company will use its best efforts to amend or supplement such prospectus in order to cause such prospectus not to include any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances then existing and end the Suspension Period. The Purchaser agrees that, upon receipt of any notice from the Company of a Suspension Period, the Purchaser will not sell any Registrable Shares pursuant to the Registration Statement during the Suspension Period until (i) the Purchaser is advised in writing by the Company that the use of the applicable prospectus may be resumed, (ii) the Purchaser has received copies of any additional or supplemental or amended prospectus, if applicable, and (iii) the Purchaser has received copies of any additional or supplemental filings which are incorporated or deemed to be incorporated by reference in such prospectus.

(c) The Company shall furnish to the Purchaser such reasonable numbers of copies of the prospectus and the Registration Statement, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the Purchaser may reasonably request in order to facilitate the public sale or other disposition of its Registrable Shares. If the Company has delivered preliminary or final prospectuses to the Purchaser and after having done so the prospectus is amended to comply with the requirements of the Securities Act, the Company shall promptly notify the Purchaser and, if requested, the Purchaser shall immediately cease making offers of Registrable Shares and return all prospectuses to the Company. The Company shall promptly provide the Purchaser with revised prospectuses and, following receipt of the revised prospectuses, the Purchaser shall be free to resume making offers of its Registrable Shares.

(d) The Purchaser hereby covenants with the Company, in connection with any sale of the Registrable Securities, the Purchaser shall cause the prospectus delivery requirements under the Securities Act to be satisfied and shall otherwise comply with all applicable laws, rules and regulations. The Purchaser acknowledges and agrees that the Registrable Securities sold pursuant to the Registration Statement are not transferable on the books of the Company unless the stock certificate submitted to the transfer agent evidencing such Registrable Securities is accompanied by a certificate reasonably satisfactory to the Company to the effect that (i) the Registrable Securities have been sold in accordance with such Registration Statement and (ii) the requirement of delivering a current prospectus has been satisfied.

(e) The Company shall use its best efforts to register or qualify the Registrable Shares covered by the Registration Statement under the securities or blue sky laws of such states as the Purchaser shall reasonably request, and do any and all other acts and things that may be necessary or desirable to enable the Purchaser to consummate the public sale or other disposition in such states of its Registrable Shares; *provided, however*, that the Company shall not be required in connection with this Section 8.2(d) to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction.

8.3 Allocation of Expenses. The Company will pay all Registration Expenses of any registration under this Agreement. The Purchaser will pay all other expenses incurred in connection with any registration hereunder.

8.4 Indemnification and Contribution.

(a) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, the Company will indemnify and hold harmless the seller of such Registrable Shares, each underwriter of such Registrable Shares, and each other Person, if any, who controls such seller or underwriter within the meaning of the Securities Act or the Exchange Act against any losses, claims, damages or liabilities, joint or several, to which such seller, underwriter or controlling Person may become subject under the Securities Act, the Exchange Act, state securities or blue sky laws or otherwise, insofar as such losses, claims,

damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to such Registration Statement or arise out of or are based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and the Company will reimburse such seller, underwriter and each such controlling Person for any legal or any other expenses reasonably incurred by such seller, underwriter or controlling Person in connection with investigating or defending any such loss, claim, damage, liability or action; *provided, however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon any untrue statement or omission made in such Registration Statement, preliminary prospectus or final prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, by or on behalf of such seller, underwriter or controlling Person specifically for use in the preparation thereof.

(b) In the event of any registration of any of the Registrable Shares under the Securities Act pursuant to this Agreement, each seller of Registrable Shares, severally and not jointly, will indemnify and hold harmless the Company, each of its directors and officers and each underwriter (if any) and each Person, if any, who controls the Company or any such underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities, joint or several, to which the Company, such directors and officers, underwriter or controlling Person may become subject under the Securities Act, Exchange Act, state securities or blue sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if the statement or omission was made in reliance upon and in conformity with information relating to such seller furnished in writing to the Company by or on behalf of such seller specifically for use in connection with the preparation of such Registration Statement, prospectuses, amendment or supplement; *provided, however*, that the obligations of each seller of Registrable Securities hereunder shall be limited to an amount equal to the proceeds to such seller of Registrable Shares sold in connection with such registration.

(c) Each party entitled to indemnification under this Section 8.4 (the ***"Indemnified Party"***) shall give notice to the party required to provide indemnification (the ***"Indemnifying Party"***) promptly after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; *provided* that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved

by the Indemnified Party (whose approval shall not be unreasonably withheld); and,*provided* further that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under this Section 8.4. The Indemnified Party may participate in such defense at such party's expense; *provided, however*, that the Indemnifying Party shall pay such expense if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding. No Indemnifying Party, in the defense of any such claim or litigation shall, except with the consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to each Indemnified Party of a release from all liability in respect of such claim or litigation, and no Indemnified Party shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of each other Indemnified Party.

(d) In order to provide for just and equitable contribution to joint liability under the Securities Act in any case in which either (i) the Purchaser makes a claim for indemnification pursuant to this Section 8.4 but it is judicially determined (by the entry of a final judgment or decree by a court of competent jurisdiction and the expiration of time to appeal or the denial of the last right of appeal) that such indemnification may not be enforced in such case notwithstanding the fact that this Section 8.4 provides for indemnification in such case, or (ii) contribution under the Securities Act may be required on the part of the Purchaser in circumstances for which indemnification is provided under this Section 8.4; then each Indemnifying Party shall contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, liabilities, or expenses (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the Indemnified Party as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by such Indemnifying Party or Indemnified Party, and the parties' relative knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 8.4(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in this Section 8.4(d). The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages, liabilities, or expenses (or actions in respect thereof) referred to above shall be deemed to include any legal or other fees or expenses reasonably incurred by such Indemnified Party in connection with investigating or, except as provided in Section 8.4(c), defending any such action or claim. Notwithstanding the provisions of this Section 8.4(d), (A) the Purchaser will not be required to contribute any amount in excess of the proceeds to it of all Registrable Shares sold by it pursuant to such Registration Statement, and (B) no Person guilty of fraudulent misrepresentation, within the meaning of Section 11(f) of the Securities Act, shall be entitled to contribution from any Person who is not guilty of such fraudulent misrepresentation.

8.5 Information from the Purchaser. If the Purchaser requests a registration pursuant to Section 8.1, it shall furnish to the Company such information regarding the Purchaser and the distribution proposed by the Purchaser as the Company may reasonably request in writing and as shall be required in connection with any registration, qualification or compliance referred to in this Agreement.

8.6 Rule 144 Requirements. The Company agrees to:

(a) make and keep public information available in compliance with the requirements of Rule 144;

(b) use its best efforts to file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act; and

(c) furnish to the Purchaser upon request (i) a written statement by the Company as to its compliance with the reporting requirements of said Rule 144, and the reporting requirements of the Securities Act and the Exchange Act, (ii) a copy of the most recent annual or quarterly report of the Company, and (iii) such other reports and documents of the Company as the Purchaser may reasonably request to avail itself of any similar rule or regulation of the SEC allowing it to sell the Shares without registration.

8.7 Market Stand-Off. If requested by the representative of the underwriters of Common Stock (or other securities) of the Company, the Purchaser shall not sell or otherwise transfer or dispose of any Common Stock (or other securities) of the Company held by the Purchaser for a period specified by the representative of the underwriters, in any case not to exceed 90 days following any registered offering of the Common Stock of the Company. The obligations described in this Section 8.7 shall not apply to a registration effected pursuant to a Registration Statement. The Company may impose stop-transfer instructions with respect to the shares of Common Stock (or other securities) subject to the foregoing restriction until the end of said periods.

8.8 Termination of Registration Rights. All of the Company's obligations to register Registrable Shares, and the Purchaser's rights to cause such registration, under this Agreement shall cease and terminate upon the earlier of (a) such time as all of the Registrable Shares have been sold by the Purchaser in one or more transactions in which the Purchaser's registration rights under this Section 8 have not been transferred under Section 8.9 or (b) such time as all of the Registrable Shares may be sold by the Purchaser pursuant to Rule 144(k) or in a three-month period pursuant to Rule 144.

8.9 Transfer of Registration Rights. Subject to Section 9, the rights granted to the Purchaser by the Company under this Section 8 may be assigned in full by the Purchaser to a

third party in connection with a sale by the Purchaser of Registrable Shares to such third party,*provided, however*, that (a) such transfer may otherwise be effected in accordance with applicable securities laws; (b) the Purchaser gives prior written notice to the Company at least 10 days prior to the date of filing of the Registration Statement under Section 8.2(a); and (iii) such transferee agrees to comply with the terms and provisions of this Agreement, and such transfer is otherwise in compliance with this Agreement. Except as specifically permitted by this Section 8.9, the rights of a holder of Registrable Shares shall not be transferable to any other person or entity, and any attempted transfer shall cause all rights of such holder therein to be forfeited

9. RESTRICTIONS ON TRANSFER.

9.1 Restrictions. The Purchaser agrees not to make any disposition of all or any portion of the Shares unless and until the earliest to occur of the following events:

(a) Final adjudication of the results of the Phase 3 Clinical Trial;

(b) At such time as the Purchaser's cash and cash equivalents are below [***], as certified to the Company in writing by an officer of the Purchaser;

(c) The R&D Agreement has been validly terminated.

For the avoidance of doubt, after the occurrence of any of the events set forth in Section 9(a) through (c), AnGes shall have the right hereunder to sell all or any portion of the Shares.

9.2 Early Termination of Restrictions. Notwithstanding Section 9.1, in the event that, at any time after the second anniversary of the Initial Closing Date and on or prior to the date of the earliest to occur of the events set forth in Sections 9.1(a), (b) or (c), the Company enters into a strategic alliance with a third party for a program or product of the Company that is comparable to the transactions contemplated by this Agreement and the R&D Agreement, including, without limitation, as a term of such alliance, the purchase of equity securities of the Company in order to fund research and development activities under such alliance (a ***"New Alliance"***), and if the terms of such New Alliance provide for a period during which there are restriction on transfer of such equity securities of the Company issued to such third party that is less than the anticipated total duration of the period over which research and development funding is to be provided to the Company as part of such alliance (with the understanding that Section 9.1 contemplates that the duration of the restrictions on transfer of all or any portion of the Shares is intended to be equivalent to the period over which the Purchaser is providing funding for the Phase 3 Clinical Trial, which is anticipated to be three years), then this Section 9.2 shall apply. Where the conditions of this Section 9.2 apply, the duration of the restriction on transfer of the Shares under this Section 9 shall be reduced, if applicable, to that

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period of time equal to (a) three years multiplied by (b) a fraction equal to (i) the period during which there are restrictions on transfer of equity securities of the Company issued to the third party in the New Alliance, divided by (ii) the anticipated total duration of the period over which such third party is providing research and development funding to the Company in the New Alliance. For example, if the New Alliance provides that the period during which there are restrictions on transfer of equity securities of the Company issued to the third party in the New Alliance is two years, and the anticipated total duration of the period over which such third party is providing research and development funding to the Company in the New Alliance is four years, then the duration of the restriction on transfer of the Shares under this Section 9 shall be reduced to one year and six months (i.e. (a) three years, multiplied by (b) the fraction equal to (i) two divided by (ii) four). Any disposition of the Shares permitted under this Section 9 shall remain subject to the provisions of applicable securities laws, rules and regulations.

10. ADDITIONAL COVENANTS.

10.1 Restricted Transactions. For the term of the R&D Agreement, and except as permitted by Section 9 with respect to the Shares, the Purchaser shall not, and shall not authorize, instruct, facilitate or permit any of its Affiliates or any other person or entity, to engage in any of the following (a ***"Restricted Transaction"***): (a) offer, sell or contract to sell securities of the Company or any of its affiliates or successors or any instruments convertible into or exchangeable or exercisable for securities of the Company or any of its Affiliates or successors (the ***"Company Securities"***) in a private placement or similar transaction, (b) sell any option or contract to purchase, purchase any option or contract to sell or grant any option, right or warrant for the sale of the Company Securities, or (c) enter into any swap or any other agreement or any transaction that transfers, in whole or in part directly or indirectly, the economic consequence of ownership of the Company Securities, whether any such swap or transaction is to be settled by delivery of Common Stock or other securities, in cash or otherwise.

10.2 Standstill. The Purchaser agrees that for the term of the R&D Agreement, except with the prior written consent of the Company, the Purchaser shall not, and shall not permit any of its officers, directors or affiliates to:

(a) acquire, offer to acquire, agree to acquire or cause or effect the acquisition of, directly or indirectly, by purchase or otherwise, beneficial ownership of any securities or instruments convertible into any of the Company Securities such that the aggregate beneficial ownership of the Purchaser, its officers, directors and Affiliates (on a combined basis, and if prior to the Milestone Closing Date, including for purposes of calculating such beneficial ownership, the Milestone Shares) is 20% or more of the Company's outstanding Common Stock.

(b) solicit or encourage any other entity to solicit proxies (as such terms are defined in Regulation 14A under the Exchange Act) with respect to any matter involving the Company or otherwise initiate, propose or solicit, or induce any other person or entity to initiate, propose or solicit any stockholder of the Company, any stockholder proposal, any tender offer

for Company Securities, any change of control of the Company, or for the purpose of convening a stockholders' meeting of the Company;

(c) deposit any Company Securities in any voting trust or subject them to any voting agreement or other agreement of similar effect;

(d) join or form any partnership, limited partnership, syndicate, or other group within the meaning of Section 13(d)(3) of the Exchange Act for the purpose of acquiring, holding or disposing of beneficial ownership of any Company Securities or encourage, advise or, for the purpose of circumventing or avoiding any of the provisions of this Agreement, assist any person or entity to do any of the foregoing or otherwise take any action individually or jointly with any partnership, limited partnership, syndicate, or other group or assist any other person, corporation, entity or group in taking any action it could not individually take under this Agreement;

(e) make, effect, cause, initiate or participate in any Acquisition Transaction (as defined below) with respect to the Company; or

(f) make any public proposals to the Company or any of its Affiliates, directors, officers, employees, agents, representatives, successors or security holders concerning any Acquisition Transaction relating to the Company or any Affiliate or successor of the Company or take any action that would require the Company to make a public announcement regarding the possibility of an Acquisition Transaction with the Purchaser or any of its Affiliates.

(g) For purposes of this Section 10.2, ***"Acquisition Transaction"*** shall mean any transaction involving: (i) any sale, license, lease, exchange, transfer or other disposition of the assets of the Company or any subsidiary of the Company constituting more than 50% of the consolidated assets of the Company or accounting for more than 50% of the consolidated revenues of the Company in any one transaction or in a series of related transactions; (ii) any offer to purchase, tender offer, exchange offer or any similar transaction or series of related transactions made by any person involving more than 50% of the outstanding shares of capital stock of the Company; or (iii) any merger, consolidation, business combination, share exchange, reorganization or similar transaction or series of related transactions involving the Company or any subsidiary of the Company whereby the holders of voting capital stock of the Company immediately prior to any such transaction hold less than 50% of the voting capital stock of the Company or the surviving corporation (or its parent company) immediately after the consummation of any such transaction.

10.3 Termination of Standstill. The obligations of the Purchaser under Section 10.2 shall terminate in the event of (a) any*bona fide* unsolicited third party tender or exchange offer for at least 50% of the outstanding voting capital stock of the Company, (b) the Company enters into any agreement for an Acquisition Transaction with any entity not affiliated with the Purchaser pursuant to an unsolicited proposal by such third party, or (c) the Company, upon the decision of the Company's Board of Directors, initiates a structured auction process with regard

to an Acquisition Transaction, but excluding any market check in response to an unsolicited proposal made by any entity not affiliated with the Purchaser. All of the provisions of Section 10.2 shall be reinstated and shall apply in full force according to their terms in the event that: (i) if the provisions of Section 10.2 shall have terminated as the result of a tender or exchange offer, such tender or exchange offer (as originally made or as amended or modified) shall have terminated (without closing) prior to the commencement of a tender or exchange offer by the Purchaser that would have been permitted to be made pursuant to the first sentence of this Section 10.3 as a result of such third-party tender or exchange offer; (ii) any tender or exchange offer by the Purchaser (as originally made or as extended or modified) that was permitted to be made pursuant to this Section 10.3 shall have terminated (without closing); or (iii) if the provisions of Section 10.2 shall have terminated as a result of any action by the Company referred to in this Section 10.3, the Company shall have determined not to take any of such actions (and no such transaction shall have closed) prior to the commencement of any action by the Purchaser that would have been permitted to be made pursuant to this Section 10.3 as a result of the initial determination of the Company referred to in this Section 10.3. Upon reinstatement of the provisions of Section 10.2, the provisions of this Section 10.3 shall continue to govern in the event that any of the events described in this Section 10.3 shall occur.

11. MISCELLANEOUS.

11.1 Waivers and Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged, terminated, modified or amended except upon the written consent of the Company and the Purchaser.

11.2 Severability. In case any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

11.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflicts of law principles.

11.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original document, and all of which, together with this writing, shall be deemed one instrument.

11.5 Successors and Assigns. Except as expressly provided hereunder, neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred by either party without the prior written consent of the other party; *provided, however*, that either party may assign this Agreement and its rights and obligations hereunder without the other party's consent:

(a) in connection with the transfer or sale of all or substantially all of the business of such party to which the R&D Agreement relates to a third party, whether by merger, sale of stock, sale of assets or otherwise; or

(b) to an Affiliate, provided that the assigning party shall remain liable and responsible to the non-assigning party hereto for the performance and observance of all such duties and obligations by such Affiliate.

The rights and obligations of the parties under this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties. Any assignment not in accordance with this Agreement shall be void.

11.6 Entire Agreement. This Agreement and other documents (including the R&D Agreement) delivered pursuant hereto, including the exhibits, constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and thereof.

11.7 Payment of Fees and Expenses. Each of the Company and the Purchaser shall bear its own expenses and legal fees incurred on its behalf with respect to this Agreement and the transactions contemplated hereby. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

11.8 Broker's Fee. Each of the Company and the Purchaser hereby represents that, there are no brokers or finders entitled to compensation in connection with the sale of the Shares, and shall indemnify the other party for any such fees for which such party is responsible.

11.9 Notices. Any notice to be given under this Agreement must be in writing and delivered either in person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earliest of: (a) the date of actual receipt; (b) if mailed, three (7) days after the date of postmark; or (c) if delivered by overnight courier, the second business day the overnight courier regularly makes deliveries.

(a) If to the Company, notices must be addressed to:

Vical Incorporated
10390 Pacific Center Court
San Diego, CA 92121
Attention: Vice President, Business Development
Telephone: 858-646-1144
Facsimile: 858-646-1152

(b) If to the Purchaser, notices must be addressed to:

AnGes MG, Inc.
5F, Mita Suzuki Bldg., 5-20-14
Shiba, Minato-ku, Tokyo, 108-0014
Japan
Telephone: 81-3-5730-2489
Facsimile: 81-3-5730-2635

11.10 Headings. The headings of the various sections of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

11.11 Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE R&D AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY TO THE OTHER PARTY OF ANY NATURE, EXPRESS OR IMPLIED.

11.12 Limitation of Liability. NEITHER PARTY SHALL BE ENTITLED TO RECOVER FROM THE OTHER PARTY ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES IN CONNECTION WITH THIS AGREEMENT.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

VICAL INCORPORATED

By: /s/ Jill M. Church
Name: Jill M. Church
Title: Chief Financial Officer

ANGES MG, INC.

By: /s/ Ei Yamada
Name: Ei Yamada
Title: President and CEO

[Signature Page To Stock Purchase Agreement]

Exhibit 31.1(i)

CERTIFICATION

I, Vijay B. Samant, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vical Incorporated;

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: August 4, 2006

By: /s/ VIJAY B. SAMANT
Vijay B. Samant
Chief Executive Officer

Exhibit 31.2(i)

CERTIFICATION

I, Jill M. Church, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Vical Incorporated;

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: August 4, 2006

By: /s/ JILL M. CHURCH
Jill M. Church
Chief Financial Officer

Exhibit 32.1

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350, as adopted), Vijay B. Samant, the Chief Executive Officer of Vical Incorporated (the "Company"), hereby certifies that, to the best of his knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2006, to which this Certification is attached as Exhibit 32.1 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition of the Company at the end of the period covered by the Periodic Report and results of operations of the Company for the period covered by the Periodic Report.

Dated: August 4, 2006

/s/ VIJAY B. SAMANT
Vijay B. Samant
Chief Executive Officer

THIS CERTIFICATION "ACCOMPANIES" THE FORM 10-Q TO WHICH IT RELATES, IS NOT DEEMED FILED WITH THE SEC AND IS NOT TO BE INCORPORATED BY REFERENCE INTO ANY FILING OF THE COMPANY 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-Q), IRRESPECTIVE OF ANY GENERAL INCORPORATION LANGUAGE CONTAINED IN SUCH FILING. A SIGNED ORIGINAL OF THIS CERTIFICATION HAS BEEN PROVIDED TO THE COMPANY AND WILL BE RETAINED BY THE COMPANY AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.

Exhibit 32.2

CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350, as adopted), Jill M. Church, the Chief Financial Officer of Vical Incorporated (the "Company"), hereby certifies that, to the best of her knowledge:

1. The Company's Quarterly Report on Form 10-Q for the period ended June 30, 2006, to which this Certification is attached as Exhibit 32.2 (the "Periodic Report"), fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934, as amended; and

2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition of the Company at the end of the period covered by the Periodic Report and results of operations of the Company for the period covered by the Periodic Report.

Dated: August 4, 2006

/s/ JILL M. CHURCH
Jill M. Church
Chief Financial Officer

THIS CERTIFICATION "ACCOMPANIES" THE FORM 10-Q TO WHICH IT RELATES, IS NOT DEEMED FILED WITH THE SEC AND IS NOT TO BE INCORPORATED BY REFERENCE INTO ANY FILING OF THE COMPANY 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-Q), IRRESPECTIVE OF ANY GENERAL INCORPORATION LANGUAGE CONTAINED IN SUCH FILING. A SIGNED ORIGINAL OF THIS CERTIFICATION HAS BEEN PROVIDED TO THE COMPANY AND WILL BE RETAINED BY THE COMPANY AND FURNISHED TO THE SECURITIES AND EXCHANGE COMMISSION OR ITS STAFF UPON REQUEST.